

Federal Bureau of Prisons

Change Notice

DIRECTIVE AFFECTED:
4100.03
CHANGE NOTICE NUMBER: 3
DATE:
9/10/99

1. **PURPOSE AND SCOPE.** To update PS 4100.03, the Federal Bureau of Prisons Acquisition Policy (BPAP).

2. **SUMMARY OF CHANGES**

- ! Removes requirement to route Unauthorized Commitments under \$2,500 through the Assistant Director for Administration when providing copies to Central Office.
- ! Revises Management Oversight of Procurement Operations to add credit card files or other documents when requested under Management Oversight duties.
- ! Revises Management Oversight of Procurement Operations to add other reports as required by the Department of Justice, Congress, Executive Staff, other agencies, and Procurement and Property Branch.
- ! Revises Regional Office responsibilities to add Review Exception Reports for Credit Card Standard Industrial Classifications (SIC) or Merchant Category Codes (MCC), and take any appropriate action to ensure adequate oversight.
- ! Adds "Note" Warranted Contracting Officers need not obtain a separate cardholder delegation of authority for credit card purchases.
- ! Revises Level I Authority to add Trust Fund Staff for Commissary resale items when procurement actions do not exceed \$25,000.
- ! Adds Real Property Leasing Authority commensurate with the Contracting Officers Warrant Level.

- ! Revises the date to forward a list of all active Contracting Officers, and their locations, to the Procurement and Property Branch.
- ! Revises and adds information to Attachment 1-A, Procurement Restrictions.
- ! Adds definition for "Definitization."
- ! Adds the new Procurement Integrity Certification form number.
- ! Revises Reviews Prior to Contract Award to include modification files for review to the Procurement and Property Branch and adds language to include review of any post award actions.
- ! Clarifies the Regional Offices and the Procurement and Property Branch shall accurately enter the Individual Contract Action Report into the Automated Contract File within 10 calendar days after award.
- ! Clarifies the SF-281 report to include all applicable procurement actions of \$25,000 or less.
- ! Adds each Contracting Officer shall establish and maintain a numbering system for Request for Contract Action (RCA).
- ! Clarifies Purchase Orders to include Contracting Officers shall ensure all Purchase Orders are numbered with either a PO number or a YREGDOC number. Contracting Officers are not responsible for monitoring YREGDOC number logs.
- ! Adds procedures for closing out new facility construction contract files.
- ! Revised and added new Acquisition Lead Times.
- ! Adds "Note" clarifying Year-End Procurements for credit card orders.
- ! Adds "Note" clarifying the numbering system for Request for Purchases for Central Office Construction Contracting Section and Building and Facilities construction sites until completion of the construction project.

- ! Clarifies if a Request for Contract Action is used in lieu of a Request for Purchase, it must contain all information that would otherwise be contained in the Request for Purchase.
- ! Clarifies that any request for firearms not previously approved for use within the Bureau shall be submitted to the Regional Correctional Services Administrator for approval.
- ! Clarifies that Requests for Purchase for computer equipment repairs are not required to have approval by the local Computer Specialist.
- ! Adds requirements for ordering business cards.
- ! Clarifies the Cost Center Manager or designee, shall sign the Request for Purchase and/or other prescribed form.
- ! Removes second paragraph under Military type Use of Other Government Supply Sources.
- ! Clarifies any recommendation for remission of liquidated damages, in whole or in part, shall be processed in accordance with FAR 11.502(d).
- ! Clarifies the approvals for dollar thresholds noted in BPAP Part 6 are also applicable to the acquisition of Commercial Items.
- ! Clarifies that all Bureau solicitations, contract awards, and orders (except for acquisitions made under FAR 12.603 and FAR Part 36) must use the SF-1449, or other approved forms for commercial acquisitions.
- ! Adds the Bureau Procurement Chief must approve clauses or terms and conditions that are inconsistent with customary commercial practices (e.g., quality assurance methods prescribed by BOP for the Relocation Program including clauses normally not included in commercial items, etc.)
- ! Adds procedures for Contract Specialists to place credit card orders on behalf of other Cost Centers and requires them to be in accordance with the special procedures outlined in the TRM.
- ! Clarifies warranted Contracting Officers are not required to obtain a separate Delegation of Cardholder Authority letter.

- ! Clarifies each issuer of Delegation of Cardholder Authority shall maintain a copy of the signed Delegation of Authority letter, Procurement Integrity Certification, and Certification by EDM of training completion of Procurement/Ethics and Credit Card Training indefinitely.
- ! Adds procedures for cardholders leaving the BOP or transferring to another institution.
- ! Clarifies prohibited items from being purchased on the credit card giving an exception to the Human Resource Department when purchasing incentive awards.
- ! Clarifies once credit card files are reconciled and approved by the AO, files shall be maintained by the Cost Center Manager or designee.
- ! Revises and clarifies the Agency Program Coordinator's responsibility to ensure a random review is conducted annually, of the Approving Official (Cost Centers) files to ensure credit card purchases comply with policy. A copy of any deficiencies found, required corrective action taken, and if applicable, any follow-up action be forwarded to the Regional Comptroller.
- ! Adds competition approval thresholds listed in the BPAP, Part 6 apply to all acquisitions processed under SAP.
- ! Adds any GSA electronic order forms can be used if the appropriate fields are incorporated into the forms and the Contracting Officer signs the file copies. The Chief of PPB may approve other forms, if appropriate.
- ! Adds the Contracting Officer's responsibility is to complete the contractor's name, address, and electronic payment routing fields in each Purchase Order document.
- ! Adds "Note" stating specific items that will be provided by the Cost Center Manager, Accounting or Budgeting.
- ! Adds if no bids are received for a solicitation the Regional Chief shall review the possible reasons for the non-receipt of bids, and inform the appropriate Regional Administrator of details.
- ! Adds procedures on "Responsibilities of the Source Selection Authority (SSA) Privatized Corrections Contracts."

- ! Clarifies that past performance shall be included for all competitively negotiated procurements.
- ! Adds for Privatized Corrections Contracts, the Administrator, Privatization and Special Projects Branch, shall appoint team members in writing and designate the Chairperson.
- ! Clarifies the applicable Chief Executive Officer shall submit any request to reject all proposals to the Regional Director for approval.
- ! Adds the Regional Chief, Procurement and Property shall review a request to reject all proposals and all supporting documentation.
- ! Adds if no offers are received for a solicitation, the Regional Chief shall review the possible reasons for the non-receipt of offers and inform the appropriate Regional Administrator of details.
- ! Adds the documentation shall be commensurate with the dollar threshold and complexity of the acquisition or basis for determining the final negotiated price.
- ! Revises definition of IAGs, IGAs, and RAs.
- ! Adds procedures for Reviewing the Subcontracting Plan.
- ! Removed restrictions and exceptions on certain foreign purchases.
- ! Clarifies and adds that no award shall be awarded until the CO has received approval from the Chief, Procurement and Property Branch and such award is consistent with the JAR.
- ! Clarifies if the protest is filed before the award, the award shall not be made without written approval from the Chief, Procurement and Property Branch and such award is consistent with the JAR. The protestor has the option of protesting to the Contracting Officer or to the Agency Protest Official.
- ! Adds procedures if the protestor chooses the Agency Protest Official to decide the protest.
- ! Clarifies the procedures for responding to a GAO protest.

- ! Revises the number of calendar days award is likely to occur upon written finding.
- ! Revises the number of calendar days needed to suspend performance in a GAO protest to be consistent with the FAR.
- ! Revises Contracting Officers's Duties Upon Appeal.
- ! Revises Evaluation of Contractor Performance.
- ! Clarifies who shall appoint evaluation board members for Architect-Engineer services.
- ! Adds procedures for the Contracting Officer when liability for Government Costs Resulting from Design Errors, Omissions, and Deficiencies.
- ! Clarifies when the Cost Center Manager or Contracting Officer Technical Representative shall provide written evaluations of the services provided and the performance of the contractor.
- ! Revises Contracting Officers responsibilities for service contract award and compliance.
- ! Revises Cost Center Managers responsibilities for service contracts.
- ! Adds Regional Office requests for private sector temporaries shall be in the form of a memorandum from the Program Office to the corresponding Assistant Director for approval.
- ! Revises that the Cost Center Manager shall provide a written evaluation of services provided and performance of the contractor in accordance with BPAP Part 37.102 and TRM, Part 37, when using private sector temporaries.
- ! Adds Contractor Performance Information.
- ! Revises procedures if the Contracting Officer determines it is necessary to issue a Change Order.

3. **TABLE OF CHANGES**

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4. **ACTION.** File this Change Notice in front of PS 4100.03,
Bureau of Prisons Acquisition Policy.

/s/
Kathleen Hawk Sawyer
Director



U.S. Department of Justice
Federal Bureau of Prisons

Change Notice

DIRECTIVE AFFECTED: 4100.03
CHANGE NOTICE NUMBER: 02
DATE: 8/21/98

1. PURPOSE AND SCOPE. To update PS 4100.03, the Federal Bureau of Prisons Acquisition Policy (BPAP).

2. SUMMARY OF CHANGES

- ! Revises and clarifies Acquisition of Federal Information Resources to reflect new cites.

3. TABLE OF CHANGES

Remove

Part 39, Pages 1 - 3

Insert

Part 39, Pages 1 and 2

4. ACTION. File this Change Notice in front of PS 4100.03, Bureau of Prisons Acquisition Policy.

/s/
Kathleen Hawk Sawyer
Director



Change Notice

DIRECTIVE BEING CHANGED: 4100.03
CHANGE NOTICE NUMBER: 01
DATE: 12\31\97

1. PURPOSE AND SCOPE. To update PS 4100.03, the Federal Bureau of Prisons Acquisition Policy (BPAP).

2. SUMMARY OF CHANGES

- ! Rescinds OM 236-95 (4100), Governmentwide Commercial Credit Card Program and updates Directives Referenced section.
- ! Updates American Correctional Association Standards Referenced.
- ! Requires institutions to issue an Institution Supplement containing instructions for processing Requests for Purchase. In addition, requires that each institution include procedures for receipt of credit card purchases in the Institution Supplement addressing receiving procedures (Trust Fund/Warehouse/Laundry Manual).
- ! Adds Value Engineering to permit Cost Center Managers and Contracting Officers to reduce contract costs without impairing contract functions or characteristics.
- ! Adds aggregate totals for Negotiated Pre-award Contracts and Pre-executed Modifications under Management Oversight of Procurement Operations.
- ! Removes the word "acquisition" from the footnote referenced under Management Oversight of Procurement Operations.
- ! Revises and clarifies requirements for Federal Procurement Data System (FPDS) Reports.
- ! Clarifies dollar levels at which institutions may place delivery orders, by replacing "SAP" with "SAT".
- ! Revises the Approval of the Justification to reflect new approval thresholds.

- ! Clarifies requirements for Special Approvals, to specify the requirement for security, surveillance, or electronic communications equipment not previously approved by the Regional Office to be submitted to the Regional Administrator for approval.
- ! Revises the Solicitation/Contract/Order Form to add Community Corrections and Privatized Corrections Contracting Services as an exception when using the SF-1449.
- ! Clarifies Cancellation of Request for Proposals to "after Closing Date".
- ! Revises Cost Center Manager Responsibility to clarify when the Regional Director's approval is applicable for services in excess of 30 hours per week.
- ! Adds Funding and Term of Service Contracts to reflect responsibilities in obtaining approvals prior to using current year funding for any base or option period of a severable service contract that crosses fiscal years.
- ! Revises Government Use of Private Sector Temporaries to reflect workdays instead of calendar days.
- ! Revises the section on Administration to clarify when higher approvals are required for payments made against Unilateral Modifications.
- ! Revises Authorities and Responsibilities for Termination of Contracts permitting the Regional Chief to approve, when applicable, "No-cost Terminations for Convenience".

3. TABLE OF CHANGES

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4. ACTION. File this Change Notice in front of PS 4100.03,
Bureau of Prisons Acquisition Policy.

\s\
Kathleen M. Hawk
Director



Program Statement

OPI: ADM
NUMBER: 4100.03
DATE: September 16, 1996 (CN-01)
SUBJECT: BOP Acquisitions

1. PURPOSE AND SCOPE. To provide controls for the acquisition of supplies and services and to provide operational direction for staff responsible for contracting functions. The Bureau of Prisons Acquisition Policy is being revised as a result of the Federal Acquisition Streamlining Act of 1994.

Technical, instructional, and reference material previously included in the Bureau of Prisons Acquisition Policy have been placed in a Procurement Technical Reference Manual which is being issued in conjunction with this revision.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. All procurement activity will be conducted by staff authorized to undertake that procurement.

b. Contracts will be effectively managed.

c. Fraud, waste, abuse, mismanagement, and illegal acts in procurement will be prevented, detected, and reported.

d. Data on procurement will be accurately collected and reported.

e. Small and disadvantaged businesses will be used whenever feasible and appropriate.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

- OM 004-95 (4100) Memberships in Organizations (1/6/95) as extended by OM 247-95 (12/14/95) and OM 055-96 (5/3/96)
- * OM 236-95 (4100) Governmentwide Commercial Credit Card Program (12/6/95) *

b. Directives Referenced

- * PS 1120.17 Delegating Authority in the Absence of Chief Executive Officers (8/5/96)
- PS 1222.06 Forms Management (9/17/97)
- PS 1232.05 Personal Computers (11/10/97)
- PS 1237.10 Personal Computers Network Standards Manual (11/24/97) *
- PS 1520.09 Printing, Distribution Management and Electronic Documents (5/21/97)
- PS 1600.07 Occupational Safety and Environmental Health (5/30/96)
- PS 2000.02 Accounting Management Manual (10/15/86)
- PS 2100.03 Budget Execution Manual (8/4/95)
- PS 3000.02 Human Resource Management Manual (11/1/93)
- PS 3420.08 Standards of Employee Conduct (3/7/96)
- PS 3735.04 Drug Free Workplace Program (6/30/97)
- PS 4200.09 Facility Operations Manual (4/3/96)
- PS 4400.03 Property Management Manual (2/27/96)
- PS 4500.04 Trust Fund\Warehouse\Laundry Manual (12/15/95)
- PS 5500.06 Guard Service at Local Medical Facilities (12/15/93)
- PS 5500.09 Correctional Services Manual (10/27/97)
- PS 5553.05 Escapes/Deaths Notification (9/17/97)
- PS 6000.05 Health Services Manual (9/15/96)
- PS 7300.08 Community Corrections Manual (4/1/91)

DOJ Order 2830.01D Automated Information Systems Policies (10/3/86)

4. STANDARDS REFERENCED

- * a. American Correctional Association, 3rd Edition Standards for Adult Correctional Institutions: 3-4038.
- b. American Correctional Association, 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-1B-11.
- c. American Correctional Association, 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-1B-09.
- d. American Correctional Association Standards for Adult Correctional Boot Camp Programs: 1-ABC-1B-12. *

5. ACTION

a. Staff responsible for acquisition of supplies, services and equipment shall use this Manual to ensure appropriate procurement policies and procedures are used.

* b. Each institution shall issue an Institution Supplement containing instructions for processing Requests for Purchase and processing Government credit card transactions.

c. Each institution shall include procedures for receipt of credit card purchases in the Institution Supplement addressing receiving procedures (Trust Fund/Warehouse/Laundry Manual). *

\s\
Kathleen M. Hawk
Director

BUREAU OF PRISONS ACQUISITION POLICY

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PART 1. - GENERAL

SUBPART 1.1 - PURPOSE, AUTHORITY, ISSUANCE

1.101 - Purpose, Authority, Applicability, and Issuance

(a) The Bureau of Prisons Acquisition Policy (BPAP) is established to provide uniform acquisition policy for institutions and offices within the Bureau of Prisons (Bureau). The BPAP supplements the Federal Acquisition Regulation (FAR) and the Department of Justice Acquisition Regulations (JAR). Contracting Officers shall consult all three sources as well as applicable Operations Memoranda to ascertain the total acquisition policy in any area.

(b) The BPAP has been developed in accordance with FAR 1.301(c) and JAR 2801.301(d)(4). Authority to issue acquisition policy has been delegated to the Director. The Administration Division, Procurement and Property Branch, maintains the BPAP.

(c) Supplemental instruction and reference material is also contained in the Procurement Technical Reference Manual (TRM) and covers areas where internal implementation is required by the BPAP, or where internal procedures supplement the BPAP coverage. The TRM covers procedural instructions in order to maintain a consistent and compatible method of contracting. The TRM numbering system correlates with Chapters and Subparts of the BPAP.

(d) The Program Statement (P.S.) is further subdivided into Parts 1 through 53, which corresponds to FAR Parts 1 through 53. The numbering system permits immediate identification of each TRM Part with coverage of the same subject matter in the BPAP, FAR, and JAR.

(e) A provision has been made to permit the inclusion of material intended to supplement FAR coverage (e.g., areas for which there is no FAR coverage, but for which the Department of Justice (DOJ) or the Bureau's requirements dictate the establishment of regulations, policies or instructions). Such supplementary material is identified by a numerical suffix of 70 or higher in the final position of the reference number in both the JAR, BPAP, and TRM as the examples below illustrate:

FAR 1.602-3	-----	Ratification of Unauthorized Commitments
JAR 2801.602-3	-----	Ratification of Unauthorized Commitments
BPAP 1.602-70	-----	Ratification of Unauthorized Commitments
Procurement TRM 1.602-70	----	Ratification of Unauthorized Commitments

SUBPART 1.2 - ADMINISTRATION

1.201 - Maintenance of the BPAP

The Director shall issue revisions to the BPAP as necessary through the Administration Division. Suggestions for revisions shall be submitted to the Chief, Procurement and Property Branch.

SUBPART 1.4 - DEVIATIONS

1.402 - Policy

Deviations (both individual and class) from the BPAP must be authorized in writing by the Assistant Director for Administration, in accordance with the current Directives Management Manual.

SUBPART 1.6 - CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

1.601-71 - Restrictions on Procurement Authority

Only Contracting Officers delegated warrant authority in accordance with BPAP 1.603 may initiate the procurement of supplies, services, construction, etc., on behalf of the Government.

However, an order may be placed by staff other than Contracting Officers upon the prior obligation of funds against an already established contract, (e.g., Pharmacists ordering pharmaceuticals and supplies under the "Prime Vendors for Pharmaceutical Purchases"). Additionally, Government credit cardholders that have received mandatory training for micro-purchases may place orders via the Government purchase credit card.

Additionally, before a procurement action is initiated for products or services listed in Attachment 1-A, entitled, "Procurement Restrictions," the Contracting Officer must obtain the necessary approvals. Attachment 1-A describes current restrictions and identifies officials within the Bureau who have approval authority in such matters. Requests shall be in writing and routed through the proper channels specified in the attachment (e.g., from the institution Chief Executive Officer, to the Regional Director, Attention: Regional Chief, Procurement and Property. For actions requiring Central Office approval, the request shall be forwarded to the Assistant Director for Administration, Attention: Chief, Procurement and Property Branch. Approval shall be granted on a case-by-case basis from the administrative level having authority for the transaction.

1.602-70 - Ratification of Unauthorized Commitments

Except as provided in 1.601-71 warranted Contracting Officers may authorize the procurement of supplies, services, construction, etc., on behalf of the Government. The Government is not bound by agreements or commitments made by persons to whom contracting authority has not been delegated. Unauthorized acts violate Federal statutes, regulations, and good acquisition practices in general.

Invoices for unauthorized commitments shall not be paid until the approval for ratification has been received and the unauthorized commitment has been ratified.

In any instance when suspected irregularities may involve fraud against the Government, or any type of misconduct that can be punishable as a criminal offense, either the employee's supervisor or the Contracting Officer must report the matter immediately to:

Federal Bureau of Prisons
Office of Internal Affairs
320 First Street NW
Washington DC 20534

Unauthorized commitments, if determined to be legal and appropriate, may be approved for ratification subject to the following:

(a) Institutions, Regional Offices, and the Central Office shall maintain a numerical register of all unauthorized commitments.

(b) The individual who made the unauthorized commitment shall furnish all records and documents concerning the commitment, a complete written statement of facts, and a plan for corrective action to preclude recurrence.

* (c) The Contracting Officer assigned the ratification action shall ensure all requirements in FAR 1.602-3 are addressed, and forwarded through the Chief Executive Officer, to the Regional Director, Attention: Regional Chief, Procurement and Property. *

(d) The Regional Director is authorized to approve unauthorized purchases within the micro-purchase threshold (\$2,500) for those institutions within their respective Region. The request must have the concurrence of the Regional Counsel and must be ratified by the Regional Chief, Procurement and Property. This authority may not be further redelegated. For the Central

1.602-70 - Ratification of Unauthorized Commitments (Continued)

Office, Regional Offices and the Management Specialty Training Center (MSTC), the Chief, Procurement and Property Branch, shall approve and ratify unauthorized purchases within the micro-purchase threshold (\$2,500). The request must have the concurrence of the Office of General Counsel.

Note: All other Unauthorized Procurements that occur within the Region shall be processed in accordance with paragraph (e) of this section.

(e) For unauthorized actions exceeding \$2,500, the Regional Chief Procurement and Property shall ensure the request receives concurrence from the Regional Director and Regional Counsel. The request shall then be forwarded to the Central Office for ratification by the Chief, Procurement and Property Branch with the concurrence of the Office of General Counsel and the Assistant Director for Administration. For the Central Office and MSTC, unauthorized actions exceeding \$2,500 shall be approved and ratified by the Chief, Procurement and Property Branch with the concurrence of the Office of General Counsel and the Assistant Director for Administration.

Note: Copies of all ratifications of \$2,500 or less (approved by the Regional Director) shall be forwarded to the Chief, Procurement and Property Branch. The Central Office forwards to DOJ a copy of each ratification of an unauthorized commitment regardless of dollar value.

1.602-71 - Management Oversight of Procurement Operations

The responsibilities identified below are procurement issues requiring a reasonable level of monitoring and supervision.

I. Regional Office Responsibilities:

(a) Regional Contract Specialists shall review the following acquisition documents within their respective Region.

- * (1) Requests for Purchase, credit card files, or other documents, when requested; *
- (2) Requests for Training and Individual Development Plans (BPAP 1.603-3);
- (3) Inter-Agency and Inter-Governmental Agreements;

**1.602-71 - Management Oversight of Procurement Operations
(Continued)**

- (4) Unauthorized Micro-purchases (BPAP 1.602-70);
1 Unauthorized Commitments (BPAP 1.602-70),
- 1 (5) Requests for Lease of Space (SF-81);
- 1 (6) Advisory and Assistance Services (BPAP 37);
- 1 (7) Determinations and Findings;
- 1 (8) Federal Procurement Data System Reports (BPAP 4.6);
- * (9) Solicitations (before issuance) exceeding \$100,000,
1 Solicitations (before issuance) exceeding \$1,000,000; *
- (10) Negotiated Pre-award Contracts and Pre-award and
Pre-executed Modifications exceeding \$100,000 aggregate
total (excluding the exercising of option periods),
* 1 Negotiated Pre-award Contracts and Pre-executed Modifications
exceeding \$500,000 aggregate total (excluding the exercising of
option periods); and *
- * 1(11) Other reports as required by the DOJ, Congress, Executive
Staff, other agencies, and PPB (e.g., Recycled Goods Report,
Forecast of Contract Opportunities, etc.). *
- 1 **Note:** After reviewing, the Regional Chief, Procurement and
Property shall forward the above indicated documents to the
Central Office.

(b) Small Purchases - Regional Contract Specialists shall randomly review the acquisition documents (Requests for Purchase (RP)) of institutions within their respective Regions. The purpose is to ensure that purchases meet applicable statutes, regulations, and the policies of the agency. Generally, documents should be reviewed to determine if small purchase files are adequately documented with regard to the following:

- * (1) Adequate competition or documentation for all purchases
greater than the micro-purchase threshold (FAR 13.106); *
- (i) If competition was requested and only one quote received,
price reasonableness must be documented;

1.602-71 - Management Oversight of Procurement Operations
(Continued)

(ii) If only one source was sought, adequate documentation must be provided to explain the reason for the absence of competition, as well as price reasonableness;

(2) Mandatory source compliance (FAR Part 8);

(3) Ensure small purchase procedures and small business set-asides are observed for purchases in excess of the micro-purchase threshold, or other proper documentation is provided;

(4) Appropriate and required specifications;

(5) Appropriate sub-object coding for equipment and Federal Procurement Data System (FPDS) designation codes;

(6) Evidence of unauthorized procurements, mandatory corrective action (FAR 1.602-3);

(7) Evidence of splitting orders to avoid competition;

* (8) Compliance with the Service Contract Act or Davis-Bacon Act (FAR 37.107 and 22.403-1); and *

(9) Other indicators that requirements are not processed in accordance with applicable statutes, regulations, Departmental, and Bureau policies.

(c) For Solicitation, Pre-award, and Modification Reviews, Regional Contract Specialists shall review the files specified below for general compliance with FAR, JAR, and BPAP. The complete solicitation file, contract file, and modification file shall, as applicable, be presented for review. Solicitations shall be ready for issuance and require only the date of issuance to be inserted. Awards and modifications shall be ready for issuance, lacking only the signature and date. Upon completion and documentation of the review, and any corrections, the Regional Chief, Procurement and Property shall forward the solicitation or pre-award file to the Procurement and Property Branch, Central Office (if applicable).

Contracting Officers shall correct and document noted deficiencies prior to solicitation issuance, modification execution, award, or forwarding for higher reviews. Orders placed against Federal Supply Schedules, Basic Ordering

**1.602-71 - Management Oversight of Procurement Operations
(Continued)**

Agreements and existing agency contracts are excluded from this requirement.

(d) Regional Contract Specialists shall be responsible for the solicitation and award of all institution and Regional contract actions in excess of \$100,000. However, institutions are authorized to place delivery orders in excess of the SAT against other Government contracts (e.g., Bureau National Contracts,

Defense Logistics Agency, Federal Bureau of Investigation (FBI), Federal Supply Schedule contracts, etc.), and mandatory sources (e.g., UNICOR, VA, etc.). The Regional Office has the authority to select additional solicitation documents for review.

(e) FPDS - Regional Contract Specialists shall review, ensure accuracy, consolidate when applicable, and forward to the Central Office the FPDS reports specified in BPAP 4.6.

(f) Compile and consolidate procurement of recycled goods report and forward to the Central Office by the 10th of November following the end of the fiscal year, **or as requested**.

(g) Review and forward unauthorized procurement ratification requests to the Central Office as specified in BPAP 1.602-70.

(h) Review and identify training needs to maintain or upgrade contracting authority of Contracting Officers within the Region. (BPAP 1.603-3)

(i) Regional Review Requirements: The Regional Chief, Procurement and Property shall obtain follow-up actions necessary to ensure all significant deviations/deficiencies noted in Program, Operational, or Oversight Reviews are corrected; and

* (j) Review Exception Reports for Credit Card Standard Industrial Classifications (SIC) or Merchant Category Codes (MCC), and take any appropriate action to ensure adequate oversight. *

(k) Reporting Requirements: Upon review, a memorandum from the Regional Chief, Procurement and Property to the Supervisory Contract Specialist, of the respective institution, shall be prepared indicating findings and recommendations for the review of RPs, solicitations and modifications. The memorandum shall identify deficiencies and indicate those requiring corrective action. Copies of all reviews conducted by the Region shall be

**1.602-71 - Management Oversight of Procurement Operations
(Continued)**

furnished to the Central Office, Attention: Chief, Procurement and Property Branch. The Regional Chief shall furnish to the Procurement and Property Branch the status of any RP reviews conducted within 15 days following the end of the quarter.

II. Central Office Responsibilities:

Procurement and Property Branch Contract Specialists shall review and/or process the following acquisition documents of Regional Offices, Central Office Business Office (COBO), and the Management and Specialty Training Center (MSTC), as required for Regional responsibilities specified above:

- (a) Random reviews of Requests for Purchase shall be the same as noted in Regional Office Responsibilities of this section.
- (b) Solicitation reviews of procurements expected to exceed \$1,000,000;
- (c) Modification Reviews in excess of \$500,000 (excluding option renewals);
- (d) Pre-award reviews of any negotiated contract exceeding \$500,000; and
- * (e) The Procurement and Property Branch has the authority to select additional documents for review or require additional reviews of the Regional Office (frequency dependent upon quality of past reviews or by action type). *

Note: Additional Central Office reviews of Regional Consolidated Contracting Offices, COBO and MSTC may be performed at random. The MSTC staff shall be responsible for the review of acquisition documents from the Staff Training Academy, Glynco.

**1.603 - Selection, Appointment, Reporting Career Management
Statistics, and Termination of Appointment**

1.603-2 - Selection

- * Contracting authority has been delegated by JAR 2801.601(a) to the Director, as Head of the Contracting Activity. This authority is re-delegated to the Chief, Procurement and Property Branch, who shall issue all Contracting Warrants within the

1.603-2 - Selection (Continued)

Bureau. Contracting Officers' signatory authority shall consist of all duties associated with the entire acquisition process including, but not limited to, pre-award, contract award, administration, termination, and related determinations and findings regarding procurement actions. **Note:** Warranted Contracting Officers need not obtain a separate cardholder delegation of authority for credit card purchases. *

Each candidate recommended for appointment as a Contracting Officer must meet the following criteria for training and experience requirements. Procedures for nominations shall be made as specified in the TRM. Requests for waivers must be processed through the Chief, Procurement and Property Branch.

- * (a) Level I Authority - Procurement actions not exceeding \$25,000.² (Entry Level Contract Specialists, Inventory Management Specialists and appropriate Trust Fund Staff for Commissary resale items). Incumbent must receive one formal procurement training course within one year of appointment. *

(b) Level II Authority - Procurement actions not exceeding \$100,000.² Prior to obtaining Level II authority, the Contracting Officer must receive an additional two formal procurement training courses as listed in the TRM, complete the On-The-Job Training (OJT) units in the Federal Acquisition Institute (FAI) Contract Specialist Workbook, as specified in the TRM, Attachment 1-C, and have been a Level I Contracting Officer for no less than six months.

(c) Level III Authority - Procurement actions not exceeding \$500,000.² Prior to obtaining a Level III authority, the Contracting Officer must receive an additional three formal procurement training courses as listed in the TRM, complete the OJT units in the FAI Contract Specialist Workbook, as specified in the TRM, Attachment 1-C, and have been a Level II Contracting Officer for no less than 12 months.

(d) Level IV Authority - May make obligations of funds in any amount. Prior to obtaining a Level IV authority, the Contracting Officer must receive an additional three formal procurement training courses as listed in the TRM, complete the OJT units in the FAI Contract Specialist Workbook for Level IV, as specified in the TRM, Attachment 1-C, and have been a Level III Contracting Officer for no less than 24 months.

- * **Note:** Since procurement is such a dynamic profession, individuals must complete at least one continuing

education formal contracting class every two years to maintain Contracting Authority. *

² Contract administration duties are not limited to any established dollar threshold. However, Contracting Officers may not sign modifications in excess of their warrant authority.

- * (e) Real Property Leasing Authority is commensurate with the Contracting Officers Warrant Level. Once the Contracting Officer has received the necessary Real Property Lease Classes (See TRM 1.603-2), and has leasing authority, he or she can enter into a lease after receiving a delegation from GSA. All leases shall be approved by the Assistant Director for Administration. *

1.603-3 - Reporting Career Management Statistics

- * Each Contracting Officer shall complete an Individual Development Plan (IDP) (optional use Attachment 1-D, Procurement TRM, Part 1), or other format containing similar data, and forward it to the Regional Procurement Office no later than **July 1** of each year. Copies shall be reviewed and retained by the Regional Offices. Based on information within the plan, the Region shall consolidate information and forward a list of all active Contracting Officers, and their location, to the Procurement and Property Branch, Central Office, no later than August 31 of each year. *

1.603-4 - Termination of Appointment

Employees who are separated from the Bureau or who are assigned to positions not directly involved with procurement (primary responsibilities) shall automatically forfeit their contracting authority on the date of separation or reassignment. Formal revocation of contracting authority shall be in writing from the Chief, Procurement and Property Branch. Institution and Regional Contracting Officers shall immediately return their Certificate of Appointment through the Regional Chief, Procurement and Property to the Chief, Procurement and Property Branch.

SUBPART 1.70 - CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

1.701-70 - Contracting Officer's Technical Representative

A Contracting Officer may appoint a certified Contracting Officer's Technical Representative (COTR) to monitor daily contractor performance. The following responsibilities shall be accomplished in accordance with procedures outlined in the Procurement TRM:

**1.701-70 - Contracting Officer's Technical Representative
(Continued)**

(a) Appointment, termination, and limitations of authority shall be in accordance with JAR Subpart 2801.70, and the TRM.

(b) Upon completing COTR training, the local Employee Development Manager (EDM)/Administrator shall notify the Supervisory Contract Specialist via memorandum.

(c) The Supervisory Contract Specialist or the EDM shall administer the COTR test, obtain the Procurement Integrity Certification, and forward a request for COTR appointment (with attachments) to the Regional Chief, Procurement and Property.

(d) The test shall be scored by the Regional Office. The Regional Chief, Procurement and Property shall issue a Certificate of COTR Appointment, form DOJ-539. This authority may not be further redelegated.

(e) At a minimum, the COTR shall prepare written monitoring reports quarterly and with each pay application (or as required by the Contracting Officer). The reports shall be forwarded to the Contracting Officer, and filed in the official contract file.

(f) For Central Office and MSTC employees, the Supervisory Contracts Specialist or the EDM shall administer the COTR test, obtain the Procurement Integrity Certification and forward a request for COTR appointment to the Chief, Procurement and Property Branch.

PROCUREMENT RESTRICTIONS

SUBJECT	DELEGATED TO	REFERENCES
Printing and binding services from commercial sources	Department of Justice	DOJ 2510.9
Advisory and assistance services (Consultants)	Director, Bureau of Prisons	BPAP Part 37
Copying, printing, and related equipment	Bureau of Prisons Central Office	PS 1520.07
Contracting for care and housing of state prisoners	Bureau of Prisons Central Office	18 U.S.C. 5003 18 U.S.C. 4082 18 U.S.C. 3621
Procurement of architectural and engineering services, and review of construction solicitations	Bureau of Prisons Central Office Regional Office Regional Administrator or Evaluation Board for < \$100,000	FAR 36.6 PS4200.08 BPAP Part 15 & 36
Reciprocal/no-cost agreement for mutual aid	Bureau of Prisons Institution, Chief Executive Officers	Public Law 95-224
Selection of architectural and engineering firms for existing institutions	Bureau of Prisons Central Office Chief, Facilities Development and Operations Regional Administrator or Evaluation Board for < \$100,000	PS 4200.08 FAR 36.6 BPAP Part 15 & 36
New facility and construction sites	Chief, Design & Construction	
Contracting for Community Corrections Center (CCC)	Bureau of Prisons Central Office	PS 7300.08 FAR Part 15 FAR Part 37

SUBJECT	DELEGATED TO	REFERENCES
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Selection of CCC contractors	Central Office Administrator of Community Corrections	PS 7300.08 BPAP Part 37
Approve request for lease of all space	Bureau of Prisons Central Office Assistant Director, for Administration	FPMR 101-17 FPMR 101-18 FPMR 101-19
Approve request for lease of parking space	Bureau of Prisons Central Office Assistant Director, for Administration	FPMR 101-19
Authorize advance payments	Bureau of Prisons Central Office Regional Directors (Not to exceed \$2500 and may not be re-delegated)	31 U.S.C. 3324 FAR Part 32
Inter Agency Agreements (IAG)	Bureau of Prisons Central Office Chief, Procurement and Property Branch Regional Director (when impacting only those institutions within their Region)	BPAP Part 17
Private Secure Corrections/Detention	Administration Privatization Special Projects Branch	BPAP Part 37 FAR Part 15

SUBJECT	DELEGATED TO	REFERENCES
Inter Governmental Agreement (IGA)	Bureau of Prisons Central Office Chief, Procurement and Property Branch Regional Chief when first approved by	BPAP Part 17
Intra-Agency Reimbursable Agreements	Bureau of Prisons Central Office Chief, Procurement and Property Branch Regional Director (when impacting only those institutions within their Region)	BPAP Part 17
Interservice Support Agreement (ISA)	Bureau of Prisons Central Office Chief, Procurement and Property Branch	BPAP Part 17
Memorandum of Agreement (MOA)	Bureau of Prisons Central Office Chief, Procurement and Property Branch Regional Director (when impacting only those institutions within their Region)	BPAP Part 17
Memorandum of Understanding (MOU)	Bureau of Prisons Chief Executive Officers	BPAP Part 17

PART 2

DEFINITIONS OF WORDS AND TERMS

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SUBPART 2.1 - DEFINITIONS

PART 2. - DEFINITIONS OF WORDS AND TERMS

SUBPART 2.1 - DEFINITIONS

"Agency," "Department," or "DOJ," means the Department of Justice.

"Approving Official" for Credit Card Program means "Cost Center Manager".

"Bureau" or "BOP" means the Federal Bureau of Prisons.

"Bureau Procurement Chief" or "Chief, Contracting Activity" means the Chief, Procurement and Property Branch, Central Office.

"Cardholder" means a staff member entrusted with a Government purchase credit card.

"Chief Executive Officer" means the Warden, Regional Director, or Assistant Director.

"Chief of the Contracting Office" means the Regional Chief, Procurement and Property (unless otherwise specified).

"Contract Action" means award of contract, execution of a modification, expenditure of appropriated funds.

"Contracting Activity" means the Federal Bureau of Prisons.

* "Definitization" means an agreement between the Bureau of Prisons and a contractor on definitive terms, specifications, and price to replace an undefinitized contractual action. *

"Director" or "Head of the Contracting Activity" means the Director, Federal Bureau of Prisons.

"Local Contracting Office" means institution/Regional Business Office, Central Office Business Office, and the Management and Specialty Training Center.

"Next Higher Contracting Level" means the Regional Chief, Procurement and Property for institutions and the Chief, Procurement and Property Branch, Central Office for the Regional offices.

"One Level above the Contracting Officer" means institution Supervisory Contract Specialist, Regional Chief, Procurement and Property, or higher level warranted Contracting Officer.

SUBPART 2.1 - DEFINITIONS (Continued)

"Request for Purchase" (RP) means Request for Contract Action (RCA), Government Credit Card Purchase form, and Specification Card, etc.

The Bureau of Prisons Acquisition Policy (BPAP) has been developed to promote and encourage compliance with the Federal Acquisition Regulation (FAR) and the Justice Acquisition Regulations (JAR). Interpretation of the BPAP must be predicated on factors mentioned in these definitions.

The BPAP is designed to foster the following basic principles of acquisition:

- # Competition & Impartiality
- # Advancement of Socio-Economic Goals
- # Consistency and Coordination

"Technical Reference Manual (TRM)" means the same as Procurement Technical Reference Manual, and covers areas where internal technical instructions and implementation guidelines exist that supplement the BPAP coverage. The TRM provides consistent and compatible procedures for training and oversight purposes.

Note: Throughout this Policy, for Central Office or Management and Specialty Training Center acquisitions or approvals, substitute Assistant Director for Regional Director, and substitute Procurement and Property Branch Section Chiefs for the Regional Chief, Procurement and Property.

PART 3

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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**PART 3. - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF
INTEREST**

SUBPART 3.1 - SAFEGUARDS

3.101-3 - Bureau Policies

The Bureau's Standards of Employee Conduct are contained in the Program Statement on Standards of Employee Conduct and Responsibility.

3.104 - Procurement Integrity

* (a) Procurement Ethics Training. The Chief Executive Officer at each facility shall ensure that appropriate ethics training is provided. The following individuals, who are deemed "Procurement Officials," because of the nature of their duties, shall be required to sign the appropriate Bureau certification: *

- (1) Assistant Directors and Deputy Assistant Directors;
- (2) Central Office Branch Chiefs, Assistant and Deputy Branch Chiefs;
- (3) Central Office Section Chiefs and Assistant Chiefs;
- (4) Regional Directors, Deputy Regional Directors, and Regional Executive Assistants;
- (5) Regional Administrators and Assistant Regional Administrators;
- (6) Wardens, Associate Wardens, and Executive Assistants;
- (7) Cost Center Managers and Assistant Cost Center Managers;
- (8) Program Review Examiners;
- (9) Government Purchase Credit Cardholders;
- (10) Contracting Officer Technical Representatives; and
- (11) The Chief Executive Officer shall authorize, in writing, any additional employees designated to serve as Procurement Officials.

3.104 - Procurement Integrity (Continued)

* (b) Procurement Officials Training. Local Employee Development Managers shall ensure employees who meet the criteria as Procurement Officials receive appropriate ethics training and sign a Procurement Integrity Certification for Procurement Officials form (BP-S645.041, Attachment 3-A TRM, Part 3.) The signed certificate shall be filed with the Supervisory Contract Specialist.*

(c) Disclosure of Proprietary and Source Selection Information. Only Contracting Officers, in coordination with the Freedom of Information Office, shall release source selection information and proprietary information strictly in accordance with the FAR. The Chief, Procurement and Property Branch, is authorized to approve release of such information to individuals as prescribed by the FAR.

* (d) Contracting Officer Certification. The Contracting Officer shall make the appropriate certifications (using the Contracting Officer Certificate of Procurement Integrity) for each applicable contract action. The certification shall be placed in the contract file. If the Contracting Officer does have knowledge or information concerning a violation of the Procurement Integrity Act, such information shall be submitted as required in paragraph (f) below. *

(e) Questions. Persons having questions regarding the Procurement Integrity Act, post-employment restrictions, gratuities, or ethics shall contact the Bureau Ethics Officer, Office of General Counsel, or the Chief, Procurement and Property Branch.

(f) Processing Violations or Possible Violations. Violations or possible violations shall be reported to the Chief, Procurement and Property Branch through the Regional Chief, Procurement and Property. The Contracting Officer shall not proceed with award until the Chief, Procurement and Property Branch, concurs in writing.

If it is determined a violation did occur, the Director shall be notified through the Assistant Director for Administration, and the contract file shall be forwarded to the Department of Justice (DOJ) Procurement Executive for concurrence, if appropriate. The file shall contain a plan of action for consideration of the DOJ Procurement Executive.

3.104 - Procurement Integrity (Continued)

If a violation or possible violation occurs and the contract action is urgent and compelling, or if it is otherwise in the best interest of the Government to proceed with award, the Chief, Procurement and Property Branch, may authorize the Contracting Officer to proceed, after the Assistant Director for Administration, Director, and the DOJ Procurement Executive have been notified.

SUBPART 3.2 - CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

3.203 - Reporting Suspected Violations of the Gratuities Clause

Bureau personnel shall report suspected violations of the gratuities clause through the Regional Chief, Procurement and Property to the Chief, Procurement and Property Branch. The Office of General Counsel and the Assistant Director for Administration shall be consulted prior to forwarding the report to the Director.

SUBPART 3.3 - REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

3.301 - Reporting Suspected Antitrust Violations

Bureau personnel shall submit suspected antitrust violations through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch, who shall consult with the Office of General Counsel and the Assistant Director for Administration, prior to forwarding to the Director.

SUBPART 3.4 - CONTINGENT FEES

3.408-1 - Responsibilities

The Contracting Officer's documentation of the evaluation, conclusion, and any proposed actions where a contingent fee arrangement exists, shall be reviewed by the Regional Chief, Procurement and Property in the case of institutions; or by the Chief, Procurement and Property Branch, in the case of the Regional Office or Central Office contracts. The proposed action shall be reviewed and have the concurrence of the Regional Legal Counsel or Bureau's Office of General Counsel, respectively.

3.409 - Misrepresentations or Violations of the Covenant Against Contingent Fees

Bureau personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of contingent fee arrangements, or other violation of the Covenant Against Contingent Fees shall report the matter promptly through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch, who shall consult with the Office of General Counsel and the Assistant Director for Administration, prior to forwarding to the Director.

SUBPART 3.5 - OTHER IMPROPER BUSINESS PRACTICES

3.502 - Subcontractor Kickbacks

Bureau personnel shall report suspected violations of the Anti-Kickback Act (41 U.S.C. §§ 51-54) through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch for subsequent forwarding through the Assistant Director for Administration to the Bureau's Office of General Counsel.

SUBPART 3.6 - CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM

3.602 - Exceptions

Only the Director has authority to authorize an exception to the policy in FAR 3.601. Requests for exceptions shall be submitted, in writing, to the Regional Chief, Procurement and Property, through the Regional Director to the Assistant Director for Administration, Attention: Chief, Procurement and Property Branch. The request shall have the concurrence of the Assistant Director for Administration, prior to forwarding to the Director for approval.

Part 4

ADMINISTRATIVE MATTERS

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PART 4. - ADMINISTRATIVE MATTERS

SUBPART 4.1 - CONTRACT EXECUTION

4.101-70 - Reviews Prior to Contract Award

- * (a) Prior to an award of any **"negotiated"** Bureau contract action exceeding \$500,000, the Regional Chief, Procurement and Property shall submit the complete contract and solicitation file or modification file for review to the Procurement and Property Branch, Central Office. *

(b) All other contract actions exceeding \$100,000 shall be reviewed at one level above the Contracting Officer.

(c) On an individual contract basis, the Regional Chief, Procurement and Property may request a Procurement and Property Branch pre-award review of the entire procurement process for unusual or difficult contract actions of a potentially controversial nature.

- * (d) The Procurement and Property Branch may request contracts, on an individual contract basis, to perform a pre-award review, or may request a review of any post award action. *

None of the above reviews preclude the requirement for the pre-solicitation review and approvals of Justifications for Other than Full and Open Competition.

All submissions for a higher pre-award review shall include a Supervisory review. Contracts shall be ready for award and require only the Contracting Officer's signature.

4.103 - Contract Clause

- * The Contracting Officer shall insert the clause at FAR 52.204-1, Approval of Contract, as an addenda to FAR 52.212-4 by noting in Block 27A of the SF-1449 (if used), in solicitations and contracts when any level of approval above the Contracting Officer is required. Consistent with the clause, insert the required approval(s) as an addenda to Block 20 of the SF-1449 (if used). *

SUBPART 4.2 - CONTRACT DISTRIBUTION

4.202-70 - Bureau Distribution Requirements

(a) Copies of Documents to the Regional and Central Offices. In accordance with Subpart 1.602-71(a) of the BPAP, copies of Requests for Purchase shall be forwarded to the Regional Office, or Central Office when requested.

(b) Contracting Officers shall forward copies of contracts, purchase orders, or other accounting documents, to the Payment Office, Program or Cost Center Manager, and to the Warehouse, when applicable.

SUBPART 4.6 - CONTRACT REPORTING

4.602 - Federal Procurement Data System (FPDS)

Contracting Officers shall become familiar with the FPDS Reporting Manual. Data collection points within the Bureau are:

(a) Each Contracting Officer who executes a contract action is the initial data collection point and is responsible for the collection and reporting of procurement data for their procurement office;

(b) Each Regional Office is a data sub-collection point responsible for collecting, summarizing, reviewing for accuracy, reporting data for contracts within the Region (including Regional Office contract actions); and

(c) The Central Office is the central data collection point responsible for collecting, summarizing, and reporting data for all institutions, Regions, and Central Office contract actions.

All data, sub-data, and central collection points shall consult with the Procurement TRM and the FPDS Reporting Manual for procedures to collect, compile, and report such data. See Attachment 4-A of the Procurement TRM for appropriate designation codes. The TRM and FPDS Manual provide guidance on non-reportable requirements.

4.602-70 - Federal Procurement Data System (FPDS) Reports

(a) Individual Contract Action Report (ICAR) (SF-279). Procurements, including awards exceeding \$25,000, modifications exceeding plus or minus \$500, and terminations, must be reported on an SF-279 within five calendar days after award (or contract

4.602-70 - Federal Procurement Data System (FPDS) Reports (Continued)

action). The Contracting Officer signing the contract, the Administrative Contracting Officer signing the modification, or the Contracting Officer signing applicable task/delivery order, shall be required to sign the ICAR. Detailed instructions for preparing the SF-279 are included in the FPDS Reporting Manual.

- * The Regional Offices and the Procurement and Property Branch shall accurately enter the ICARs into the Automated Contract File (ACF) within 10 calendar days after award. All FPDS entries must be accurate and complete. *

- * (b) Summary of Procurement Actions of \$25,000 or Less (SF-281). This report shall include all applicable procurement actions of \$25,000 or less. Detailed instructions for preparing the SF-281 are included in the FPDS Reporting Manual. *

The Regional Chief, Procurement and Property shall be responsible for reviewing institution and Regional reports for accuracy and completeness, retaining supporting documentation in the Regional Office, and forwarding a consolidated report as specified in the Procurement TRM.

(c) Certification of Reporting Requirements (Attachment 4-B, Procurement TRM, Part 4).

The Director or designee must certify, under penalty of perjury, the accuracy of the FPDS reports, hence it is critical that knowledgeable Bureau staff review the FPDS data.

(1) Institutions shall submit a Certification signed by the Chief Executive Officer to the Regional Director by the 10th of the month after each quarter ends.

(2) Each Regional Office shall submit a consolidated Certification signed by the Regional Director to the Assistant Director for Administration, Attention: Chief, Procurement and Property Branch, not later than 15 calendar days following the end of the first, second and third quarters, and not later than 23 calendar days following the end of the fourth quarter.

(3) The Central Office shall submit a consolidated Certification signed by the Director, or designee, to the Procurement Executive, Department of Justice.

4.602-70 - Federal Procurement Data System (FPDS) Reports (Continued)

(d) Subcontracting reports shall be submitted as indicated in the BPAP, Part 19.

SUBPART 4.8 - GOVERNMENT CONTRACT FILES

4.803-70 - Identification of Acquisition Documents

Each Contracting Office shall establish and maintain a numbering system for each type of acquisition document listed below, and noted in the TRM:

- * (a) Request for Contract Action (RCA); *
- (b) Request for Proposals (RFP)/Invitation for Bids (IFB);
- (c) Contracts;
- (d) Request for Quotations (RFQ);
- (e) Purchase Orders (including Trust Fund) (Contracting Officer's shall ensure all Purchase Orders are numbered with either a PO number or a YREGDOC number. Contracting Officers are not responsible for monitoring YREGDOC number logs.); and *
- (f) Registers for Contract, Purchase Order, and Modification (Attachment 4-C, Procurement TRM, Part 4).

- * Each Contracting Officer shall ensure all acquisition documents are assigned the appropriate numbers and all Contracts, Purchase Orders, and Modifications are entered in the Contract, Purchase Order, and Modification Registers. *

*** 4.804-70 Detailed Procedures for Closing Out Contract Files.**

4.804-70-1 Requirements for B&F New Facility Construction Documents Prior to Closeout

For reference and uniformity, detailed procedures for closing out construction contract files will be followed in accordance with the Procurement TRM. *

PART 5

PUBLICIZING CONTRACT ACTIONS

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PART 5. - PUBLICIZING CONTRACT ACTIONS

SUBPART 5.1 - DISSEMINATION OF INFORMATION

5.101-70 - Notices to the Department of Justice and the Office of Small and Disadvantaged Business Utilization

Whenever Contracting Officers are required to synopsise proposed contract actions in the Commerce Business Daily, a copy of the synopsis shall be submitted to the address specified in the Procurement TRM.

SUBPART 5.4 - RELEASE OF INFORMATION

5.403 - Requests from Members of Congress

When a Contracting Officer has determined it necessary to refer a Congressional to the Director, communications shall be channeled through the Regional Director and the Assistant Director for Administration, for subsequent forwarding to the Director.

5.404 - Release of Long-Range Acquisition Estimates

5.404-1 - Release Procedures

In accordance with the FAR, the Chief, Procurement and Property Branch, is authorized to issue releases of long-range acquisition estimates, where appropriate.

SUBPART 5.5 - PAID ADVERTISEMENTS

5.502 - Authority

(a) Publications.

(1) The Chief, Procurement and Property Branch, is delegated authority to authorize paid advertisements in writing, in advance, for the Central Office.

(2) Regional Directors, Chief Executive Officers, and the Bureau Personnel Officer (Central Office) have been delegated authority to approve advertisements for publications concerning personnel actions. Written authority must be obtained and may not be granted retroactively. (See the Program Statement on Delegations of Authority)

(3) The Regional Chief, Procurement and Property is delegated authority to authorize paid advertisements in writing, in advance, for other than personnel actions for all institutions within the Region.

PART 6

COMPETITION REQUIREMENTS

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PART 6. - COMPETITION REQUIREMENTS

SUBPART 6.3 - OTHER THAN FULL AND OPEN COMPETITION

6.304 - Approval of the Justification

* (a) Procurements \$100,000 or less that are acquired through Other than Full and Open Competition shall be approved (when appropriate) at one level above the awarding Contracting Officer.

(b) Procurements over \$100,000, but less than or equal to \$500,000, that are acquired through Other than Full and Open Competition shall be approved (when appropriate) by the Chief, Procurement and Property Branch. The request shall have the concurrence of the Chief Executive Officer, Regional Chief, Procurement and Property, the Regional Director, and Assistant Director for Administration.

(c) Procurements over \$500,000, but less than or equal to \$10,000,000, that are acquired through Other than Full and Open Competition shall be submitted to the Competition Advocate, through the Chief, Procurement and Property Branch. The request shall have the concurrence of the Chief Executive Officer, Regional Chief, Procurement and Property, the Regional Director, and Assistant Director for Administration.

(d) Procurements over \$10,000,000, but less than or equal to \$50,000,000, that are acquired through Other than Full and Open Competition shall be submitted to the Assistant Director for Administration, for approval, through the Chief, Procurement and Property Branch and the Bureau Competition Advocate. The request shall have the concurrence of the Chief Executive Officer, Regional Chief, Procurement and Property, the Regional Director, and the concurrence of the Office of General Counsel.

(e) Procurements in excess of \$50,000,000 that are acquired through Other than Full and Open Competition shall be forwarded to the Department of Justice Procurement Executive for approval. The request shall have the concurrence of all appropriate officials (i.e., Chief Executive Officer, Regional Chief, Procurement and Property, Regional Director, Chief, Procurement and Property Branch, Bureau Competition Advocate, concurrence of the Office of General Counsel, the Assistant Director for Administration, and the Director). *

These specific procedures are applicable to Trust Fund acquisitions, unless the authority in FAR 6.302-5(a)(2)(ii) is applicable (Trust Fund Management Manual).

PART 7

ACQUISITION PLANNING

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PART 7. - ACQUISITION PLANNING

SUBPART 7.1 - ACQUISITION PLANS

7.102-70 - Acquisition Lead Times

- * In accordance with the Office of Management and Budget (OMB) Policy Letter 81-1, "Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases," acquisition lead times shall be established to allow sufficient time to process procurement requests according to the method of contracting. *

The minimum adequate time for general types of procurements is listed below. "Minimum days" indicate the required time from receipt of an approved procurement package by the Contracting Officer (includes approval of funds, various justifications, etc.) through the contract award. The lead times do not include time for delivery. Year-end procurement prohibitions apply (where applicable), and are not reflected in this timetable.

<u>Type of Procurement</u>	<u>Estimated Value</u>	<u>Minimum Days</u>	
SUPPLIES OR SERVICES:			
* Small Purchases	\$25,000 or less	7	*
Automated Data Processing (ADP)	\$25,000 or less	30	
* Acquisitions for Commercial Items	Exceeding \$25,000	45	*
Sealed Bid/Supplies	Exceeding Simplified Acquisition Threshold (SAT)	90	
Sealed Bid/Construction/Services	Exceeding SAT	95	
* Competitive Negotiations	Exceeding SAT	180	
ADP/Telecommunications	Exceeding SAT	180	
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Medical Contracts	Exceeding SAT	305	*
Contract Option Renewals	Any Value	75	
* Reimbursable Agreements	Any Value	30	*
* IAGs and IGAs	Any Value	60	*

7.103-70 - Advance Procurement Planning

- * All contract actions exceeding \$500,000 in any given contract year shall be supported by a written Advance Procurement Plan (See Attachment 7-B and 7-C, TRM). Once approved by the Contracting Officer, a copy of the plan shall be maintained by the Regional Chief Procurement and Property. Advance Procurement Plans shall be prepared by the Cost Center Manager (CCM) and timely submitted to the Contracting Officer in accordance with Part 7.102-70.

*

7.104-70 - Year-End Procurements

In accordance with the Office of Management and Budget (OMB) Policy Letter 81-1, "Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases," funds appropriated by Congress for supplies for a particular fiscal year are only available to cover expenses during that year, or for the fulfillment of contracts properly made within that year. It is the policy of the Bureau to adhere to the following guidelines:

(a) Purchases for inventory shall be managed so that active inventories are maintained at normal levels.

(b) Procurement actions shall not be taken on Requests for Purchase received in the Procurement Office after September 14 through the end of the fiscal year unless they meet the following criteria which shall be documented on the Request for Purchase:

- * **Note:** For Credit Card orders the September 14 date applies to orders placed with the vendor -- not the date appearing on the statement or the credit card form.

*

(1) the request covers materials, supplies, equipment, or services for which there is an immediate need; and then only in the quantity to meet that need; or

(2) the request covers item(s) that can be ordered, received, and placed in use prior to the end of the fiscal year.

Note: When a violation of the September 14th year-end policy is discovered, and it is determined that the procurement was not for a bonafide need in accordance with the specified criteria listed above, the action will result in a contra-allotment from **current year** appropriations (Budget Execution Manual).

7.105-70 - Request for Purchase

- * "Request for Purchase" (RP) (BP-S101.041) or RCA, shall be used in submitting requirements for supplies and services.

Contracting Officers shall not initiate a procurement action until the CCM makes documentation of funds availability. The RP shall be submitted and approved in accordance with the procedures outlined below. *

Each institution shall have an Institution Supplement containing instructions for processing RPs. The forms are to be serially numbered starting with "0001" at the beginning of each fiscal year. The original shall be retained within the Purchasing Office, available in the single purchase order filing system for audit purposes.

- * **Note:** For Central Office Construction Contracting Section and Building and Facilities (B&F) new facility construction sites, the RPs shall be numbered consecutively (regardless of fiscal year) beginning with 0001 until the completion of the project. *

The RP shall be used to submit requirements for supplies and services not itemized on other prescribed forms except in the following circumstances:

(a) When local policy permits, the Health Services Department may type Purchase Orders covering medical supplies. In such case, the Health Services Administrator shall sign the numerical copy of the Purchase Order (in the body portion), indicating approval, and forward all copies of the Purchase Order to the Contracting Officer for signature, prior to placing the order with the vendor;

(b) Specification Cards;

- * (c) A Request for Contract Action (RCA) has been devised for use in identifying many types of contracts (e.g., Community Corrections Center and contract confinement programs, and contracts solicited and awarded at the Regional level). The RCA identifies the required information of a requirement for a particular location or institution, provides an estimate of requirements and costs, and identifies potential sources, etc.
If an RCA is used in lieu of an RP, it must contain all information that would otherwise be contained in the RP. *

7.105-70 - Request for Purchase (Continued)

(d) "Special Purpose Order Request" (BP-S200.045) (Trust Fund Management Manual) for procurement of special purpose order items for inmates;

(e) Electronic RPs generated by the Trust Fund Federal Prison Point of Sale System (FPPOS) and approved by Documents Control; and

(f) Purchases made using the Government purchase credit card.

Note: Purchase Orders for all controlled substances shall not list any other items. Such orders shall be prepared by a designated employee without the knowledge or assistance of inmates. Purchase Orders for all controlled substances shall bear the following statement:

"Instructions to consignor: Controlled substances and/or dangerous substances for a Prison facility. To be packed entirely separate from other items, shipped by certified mail or overnight carrier to the (here insert the name of the CCM and the address and the phone number of the institution), who shall be notified in advance concerning the date of this shipment."

The Business Office shall ensure inmates do not have access to the purchase information until the controlled substances have been received.

* The RP and/or other prescribed form shall be signed or initialed by the CCM, or designee, responsible for the particular cost center. *

In instances requiring special approvals as referenced in the BPAP, Part 7.105-73, CCMs shall obtain the pre-approvals for items prior to submitting the Request for Purchase to the Contracting Officer.

The RP must state a definite time or date that delivery is required and, if necessary, should include a statement of how the institution would be adversely affected if this delivery requirement were not met. Delivery times such as Rush, Urgent, or As Soon As Possible, etc., should not be used. Requests containing documentation which justify emergency handling should be given top priority and routine requests should be processed in order of receipt. The CCM shall indicate a recommended source(s) of supply for the requirements.

7.105-70 - Request for Purchase (Continued)

The series of blocks on the RP marked "Price Quotation Abstract" may be used to document oral solicitations (e.g., completed Request for Quotation, attached worksheets, FACNET, etc.).

- * A single purchase order or contract filing system shall contain adequate documentation to include required information pertinent to the procurement such as: Request for Purchase, Purchase Order, and any other applicable documentation (e.g., Request for Quotation, special approvals, etc.). All RP numbers shall be accounted for in a numerical logbook, or computerized system. *

7.105-71 - Request for Contract Action (RCA)

An RCA form has been devised for use in identifying a need for many types of contracts. The RCA form is used to identify a need in a particular location, provide an estimate of requirements, and identify potential sources.

7.105-72 - Security and Supervision Requirements for Contracts

- * Contracts requiring security clearances shall contain a section on security requirements as outlined in the Human Resource Management Manual. (Also see Part 37) *

7.105-73 - Requirements for Special Approvals

Whether acquired from surplus sources, purchased new or used, or leased, certain items may require advance approval or authorization. Among the reasons to control or monitor certain types of procurements are the need for standardization and compatibility of equipment or the need to obtain approval from higher authority (e.g., motor vehicles, memberships, etc.). In addition to those items noted in policy, there may be additional requirements placed upon individual disciplines by the Regional or Central Office. Special approval for some items may be granted at the local or Regional Office level, while others require approval by the Central Office, or higher.

- * It shall be the CCM's responsibility to determine and obtain all approvals and authorizations through the Chief Executive Officer, in accordance with the appropriate Program Statement, prior to forwarding to the Contracting Officer. Once approval has been obtained, the CCM shall submit the authorization with the RP to the contracting office, or if appropriate, purchase using the credit card. *

7.105-73 - Requirements for Special Approvals (Continued)

Approvals shall be filed in accordance with procedures outlined in the BPAP Part 7.105-70. Listed below are examples of some products or services requiring special approvals:

(a) Central Office Approval Required

(1) Staff Housing Furnishings requests (for other than approved items) shall be submitted to the Chief, Property Management, Central Office, as specified in the Property Management Manual; and

(2) Approval for acquisition/disposal of motor vehicles shall adhere to the Program Statement entitled, Facilities Operations Manual, Chapter 10.

(b) Regional Office Approval Required

(1) Security, surveillance, or electronic communications equipment, not previously approved by the Regional Office, shall be submitted to the Regional Administrator for approval. It shall be the CCM's responsibility to determine if equipment fits into this category, obtain such approval, and to document when questionable.

Examples include, but are not limited to: security or communications systems, emergency response equipment, forced entry equipment, identification systems, intelligence systems, intrusion detection, metal detectors, perimeter security, vehicle security, personnel security, secure grills and doors, video systems (including identification, conferencing, surveillance, detection), access controls, and security x-ray equipment; and

* (2) Any type of firearm not previously approved for use within the Bureau shall be submitted to the Regional Correctional Services Administrator for approval. (See Correctional Services Manual for examples of approved firearms). **Note:** It shall be the CCM's responsibility to determine and obtain all approvals necessary. *

(c) Local Approval Required for Government Purchase

* (1) All RPs for purchase or rental of ADP hardware, software, or services (excluding repairs), including personal computers, desktop computers, mini-computers, and mainframes, Federal Information Processing (FIP) resources by institutions, Regional Offices, and the Central Office shall be approved by the local Computer Specialist (on the face of the RP or Credit Card

7.105-73 - Requirements for Special Approvals (Continued)

Purchase Form). This ensures the request meets the standards of the Program Statement on Personal Computers and, if Local Area Network (LAN) related, the Network Standards Manual. See Part 39 for RPs of \$25,000 or more (regardless of individual item cost); and *

(2) Memberships in community or professional organizations require approval of the Chief Executive Officer (Attachment 7-A, Procurement TRM). It may be appropriate to expend Government funds to pay agency membership fees in local and professional organizations, upon determination that the expenditure is a direct benefit to the agency or is a necessary expense to further the agency's mission (5 U.S.C. § 5946). Examples of memberships that may be approved are: local Chamber of Commerce, American Correctional Association, American Correctional Health Service Association, National Fire Protection Association, etc.

Further clarification includes:

- (i) An agency may only purchase a membership in its own name, or in the name of the organizational element of the Bureau (e.g., United States Penitentiary Leavenworth, Mid-Atlantic Regional Office, Central Office, etc.);
- (ii) Only one membership per organization at each respective location is acceptable; and
- (iii) Funds may not be used for memberships in an individual employee's name. Even if a membership is job-related, it does not overcome prohibition against memberships in an individual employee's name (e.g., membership in a state bar association). However, it may be necessary to identify and associate the membership with a specific position (e.g., Warden, Health Services Administrator, etc.).

- * (3) It may be appropriate to expend Government funds to pay for business cards to further the BOP's mission (e.g., Chief Executive Officer, recruitment, etc.) Business cards require the approval of the Chief Executive Officer prior to the purchase using Government funds. Cards shall be obtained from the mandatory source, Lighthouse for the Blind, at 1-800-799-0402. *

7.105-74 - Use Standards - Office Furnishings

Pursuant to the Federal Property Management Regulations, it has been administratively determined by the Director that the positions listed below meet the requirements for executive-type office furnishings:

- (a) Positions in Grade-15 and above;
- (b) The following positions, regardless of grade: Camp Superintendents, and Staff Training Center Directors;
- (c) Similar or matching office furniture may be assigned to Secretaries and Staff Assistants whose duties are in direct support of these personnel.

SUBPART 7.2 - PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

7.202-70 - Specification ("Spec") Cards

Institutions may maintain Recurring Item Specification Cards (BP-S134.044) (or other approved computerized form) for regularly purchased items, including those procured utilizing the Government purchase credit card. Food Service, Budget and Rations Requirement Form may also be used in conjunction with the "Spec" Card. "Spec" Cards are to be maintained by the CCM as specified in the Procurement TRM. The CCM shall deliver the completed cards, when utilized, to the Contracting Office no later than the first day of the final month of the quarter.

SUBPART 7.3 - CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

7.306 - Evaluation

When the OMB Circular No. A-76, "Performance of Commercial Activities," cost comparisons are required, the agency official responsible for final evaluation of cost comparisons shall be the Assistant Director for Administration, Central Office.

7.307 - Appeals

Appeals concerning the calculation of the cost comparison shall be referred to the Director. All appeals shall be immediately forwarded to the Director through the Regional Director and the Chief, Procurement and Property Branch.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

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PART 8. - REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 8.0 - GENERAL

8.001-70 - Priorities for Use of Government Supply Sources

Defense Fuel Supply Center - Requirements for Gasoline, Fuel Oil (diesel and burner), Kerosene, and Solvents; Lubricating Oils, Greases, and Gear Lubricants; and Coal shall be submitted directly to the Defense Fuel Supply Center, Fort Belvoir, VA 22060-6222. Procedures shall be in accordance with the Federal Property Management Regulations (FPMR), 101-26.602.

8.002-70 - Use of Other Government Supply Sources

(a) Decals, Motor Vehicle - In accordance with FPMR 101-38.2, decals for official motor vehicles are required. Decals for Bureau motor vehicles shall be ordered from UNICOR, Graphics and Services, Central Office. **Only immediate needs should be requested without consideration of maintaining a stock supply.**

(b) Ammunition -

(1) Military Type:

It shall be the Chief Correctional Supervisor's responsibility to certify on the face of the RP that any ammunition requested is in accordance with the standards established in the current Correctional Services Manual.

Note: A statement similar to the following shall be shown in the "remarks column" of the Purchase Order when ordering **any** ammunition, weapons, or security devices (i.e., handcuffs and locks), along with any additional instructions concerning shipment:

"SECURITY HAZARD - TO BE DELIVERED TO THE SECURITY OFFICER ONLY"

(2) Other Ammunition/Weapons:

It shall be the responsibility of the Chief Correctional Supervisor to certify on the face of the RP that the requested ammunition and/or equipment is in accordance with the standards established in the current Correctional Services Manual.

8.002-70 - Use of Other Government Supply Sources (Continued)

- * (i) Bureau authorized weapons and ammunition shall be obtained through a National Contract, if applicable. If not, such items may be procured from the U.S. Army Armaments Material Readiness Command. *
- (ii) Gas equipment and supplies shall be procured under DOJ or Federal Supply Schedule (FSS) contracts, if available. When not available through DOJ or FSS contract, such items may be procured directly from commercial sources.
- (iii) Targets shall be procured from UNICOR.
- (c) National Contracts - Periodically, the Bureau will establish a National Contract for requirements (i.e., boiler inspection services, inmate urinalysis testing, etc.). Notice of award and pricing information will be transmitted as appropriate by the Central Office.
- (d) Motor Vehicle Acquisition - In accordance with the FPMR 101-26.501, the Bureau is required to procure new motor vehicles from the General Services Administration (GSA). Procedures shall be in accordance with the use of other Government supply sources in the Procurement TRM.

SUBPART 8.1 - EXCESS PERSONAL PROPERTY

8.102-70 - Utilization of Excess and Surplus Property

- (a) Mandatory Provisions - Pursuant to the FPMR 101-43.3, the Bureau is required to fill requirements to the maximum extent possible from excess or surplus sources of supply, as well as from sources within our own agency.
- (b) All requests for transfer of excess personal property from other agencies shall be accomplished by the use of Transfer Order, Excess Personal Property (SF-122).
- (c) See the FPMR for policy and procedures to be followed when acquiring excess personal property.

SUBPART 8.4 - ORDERING FROM FEDERAL SUPPLY SCHEDULES (FSS)

8.404 - Using Schedules

8.404-1-70 - Mandatory Use

(a) The GSA gasoline and oil credit card (service station deliveries) - Mandatory procurement of gasoline and lubricating oil (delivered directly into Government vehicles) is covered by the FSS Group 91. Institutions should secure the necessary credit cards, as provided in the schedule. Generic gasoline credit cards shall be maintained in the institution's Business Office, strictly accounted for with a memorandum record of issuance, and shall be used only for official travel in Government vehicles.

(b) All stationary products (i.e., envelopes, letterhead, etc.) shall be obtained from UNICOR at the address specified in the Procurement TRM.

(c) Official Government license tags (FPMR).

8.405-2 - Order Placement

(a) All Activity Address Codes (AAC) shall be forwarded to the Central Office for approval. Procedures for obtaining, changing, or deleting AACs shall be in accordance with the TRM.

(b) Although it is permissible under the FAR to allow Government contractors performing cost reimbursement type contracts to purchase from GSA, it is not the practice of the Bureau. Requests for assignment of AACs for contractors will not be processed.

SUBPART 8.6 - ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC. (UNICOR)

8.602 - Policy

* Authority - 18 U.S.C. § 4124 as implemented by FAR Subpart 8.6 and the FPMR provides for mandatory purchase by all Government agencies of products available from Federal Prison Industries, Inc., also referred to as UNICOR. *

8.604 - Ordering Procedures

QuickShip/Credit Card catalog orders shall be obtained from UNICOR's Customer Service Center. Ordering procedures shall be in accordance with the Procurement TRM.

SUBPART 8.8 - ACQUISITION OF PRINTING AND RELATED SUPPLIES

8.802-70 - Policy

(a) The procurement of printing, binding, and blank-book work is prohibited, except from:

- (1) Government Printing Office; and
- (2) Authorized field printing plants, such as UNICOR.

(b) The following two reports shall have the approval of the Chief Executive Officer before submission to UNICOR, Graphics and Services, Central Office (DOJ Order - Justice Publications and Printing Regulations, and P.S. "Electronic Documents, Printing and Distribution Management"):

- (1) Copy/Duplicating Inventory; and
- (2) Duplicating Production.

8.802-80 - Sources of Supply

(a) Federal Bureau of Investigation (FBI) Forms - The following forms are furnished by the FBI on a no charge basis, and may be obtained by completing and forwarding Form 1-178 (Requisition for Ordering Identification Supplies) to the Federal Bureau of Investigation, Identification Division, Washington, D.C. 20530:

FD-249	Arrest and Institution Fingerprint Cards;
FD-258	Applicant Fingerprint Cards;
FD-353	Personal Identification Fingerprint Cards; Envelopes, Self-addressed to FBI Identification Division;
R-88	Death Sheet Forms;
R-84	Final Disposition Report Forms; and
I-12	Wanted Notice Forms.

The institution's 3-digit allotment code, suffixed by a chronological number (e.g., for Lewisburg, "133-1," "133-2," "133-3," etc.), shall be inserted in the space marked "ORI" on Form 1-178.

8.802-80 - Sources of Supply (continued)

(b) Government publications shall be procured directly from the Superintendent of Documents in accordance with the Program Statement on Electronic Documents, Printing and Distribution Management.

(c) Employee I.D. Cards are available at no charge by letter request to Personnel, Employee Relations and Security Section (see the Human Resource Management Manual and PS Electronic Documents, Printing, and Distribution Management).

(d) Meal Tickets shall be obtained at no charge by sending a letter request to the Chief, Property Management Section, Central Office.

(e) Bureau forms shall be ordered in accordance with the Program Statement on Forms Management.

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SUBPART 9.4 - DEBARMENT, SUSPENSION, AND INELIGIBILITY

**9.404 - Consolidated List of Debarred, Suspended, and Ineligible
Contractors**

All notices to General Services Administration (GSA) shall be submitted by the Chief, Procurement and Property Branch, Central Office.

9.406-3 - Procedures

(a) Any information which may form the basis for debarment or suspension (FAR 9.406-2) of a contractor shall immediately be referred to the Central Office.

* (b) The Chief, Procurement and Property Branch, will consider recommending debarment or suspension to the Procurement Executive pursuant to JAR subpart 2809.402.

*

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SUBPART 11.2 - USING AND MAINTAINING REQUIREMENTS DOCUMENT

11.201-70 - Specification - Burial Services

The Bureau has established general specifications and internal procedures for inmate deaths. Guidance for burial specifications and internal procedures are outlined in Part 11 of the Procurement TRM.

SUBPART 11.5 - LIQUIDATED DAMAGES

11.502 - Policy

- * Any recommendation for remission of liquidated damages, in whole or in part, shall be fully documented to support a determination that a remission of liquidated damages is just and equitable, and shall be forwarded through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch to be processed in accordance with FAR 11.502(d). *

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12.302 Tailoring of Provisions and Contract Clauses

PART 12. - ACQUISITION OF COMMERCIAL ITEMS

SUBPART 12.1 - ACQUISITION OF COMMERCIAL ITEMS - GENERAL

12.102 - Applicability

- * Contracting Officers shall use the policies in this part in conjunction with the Bureau of Prisons Acquisition Policy (BPAP) and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; and Part 15, Contracting by Negotiation, as appropriate for the particular acquisition. Other parts of the BPAP apply to commercial items to the extent they are not inconsistent with Part 12. When another BPAP Part is inconsistent, Part 12 shall take precedence for the acquisition of commercial items. This Part does not apply to the acquisitions noted in FAR 12.102(d). See the Procurement TRM for further guidance. The approvals for dollar thresholds noted in BPAP Part 6 also apply to the acquisition of Commercial Items. *

SUBPART 12.2 - SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS

12.204 - Solicitation/Contract/Order Form

- * All Bureau solicitations, contract awards, and orders (except for acquisitions made under FAR 12.603 and FAR Part 36) shall use the SF-1449, or other approved forms for commercial acquisitions. *

SUBPART 12.3 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

12.302 - Tailoring of Provisions and Contract Clauses

The acquisition of commercial supplies or services is intended to resemble requirements customarily used in the commercial marketplace. Therefore, Contracting Officers shall include additional provisions and clauses only when necessary (e.g., for the approval of contract, option year renewals, special insurance requirements, or others specified elsewhere in the BPAP). The additions shall be identified as addenda to be included in FAR Provision 52.212-1, "Instructions to Offerors - Commercial Items," and FAR Clause 52.212-4, "Contract Terms and Conditions -

*Commercial Items." The Bureau Procurement Chief must approve clauses or terms and conditions that are inconsistent with customary commercial practices (e.g., quality assurance methods prescribed by BOP for the Relocation Program including clauses normally not included in commercial items, etc.) *

PART 13

SIMPLIFIED ACQUISITION PROCEDURES

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Part 13. - SIMPLIFIED ACQUISITION METHODS

SUBPART 13.3 - Simplified Acquisition Methods

13.301-70 - Governmentwide Commercial Purchase Card

- * The Bureau shall fully utilize the Governmentwide Commercial Credit Card Program (also referred to as the purchase card or credit card). The credit card shall be made available to employees the CCM designates. CCMs are advised that use of the card is not solely for emergency situations, but usage shall be mandatory for day-to-day purchases of \$2,500 or less per transaction for those items not otherwise prohibited, and in accordance with the Procurement TRM. Use of the credit card in no way diminishes the CCM's responsibility for sound internal controls and fiscal accountability. Credit card use for purchases of Trust Fund items for resale is optional. *
 - * Standards and guidelines to implement, use, and manage the Governmentwide Commercial Credit Card Program for small purchases throughout the Bureau are specified further in the Procurement TRM. This program delegates Cardholder authority of \$2,500 or less to CCMs (and their designees). Contract Specialists may place orders exceeding \$2,500, but not more than \$25,000 on behalf of other Cost Centers. Trust Fund purchases for resale items are authorized for \$25,000 or less. See TRM 13.301-70 (a) for procedures. *
 - * Ordering, receiving, and reconciliation procedures for orders Contract Specialists place on behalf of other Cost Centers shall be in accordance with the special procedures outlined in the TRM. Use of the credit card in excess of \$2,500 requires the Cardholder to be appointed at a minimum as a Level I Contracting Officer, and to receive one formal Procurement Training course within one year of receiving a warrant. Supervision and monitoring will continue to be under the direct control of Financial Management. *
- The Credit Card Program is intended to streamline and simplify the procurement and payment procedures, giving staff the opportunity to make practical business decisions in obtaining products or services for which they are knowledgeable.
- * (a) The Bureau's Agency Program Coordinator (Level I) shall be located in the Central Office and shall be the Bureau's primary representative to the card issuing bank. The Regional Procurement Chief shall be a Level II APC and the institution Controller and the Regional Comptroller (Level III Agency Program

13.301-70 Governmentwide Commercial Purchase Card (Continued)

Coordinator) shall have direct overall responsibility for the Credit Card Program at each location. *

(b) Definitions of positions, forms, reports, and terms, as well as responsibilities and detailed procedures, are located in the "Federal Bureau of Prisons Credit Card Handbook," which has been incorporated into the TRM (Attachment 13-A).

* (c) Personnel designated to become "Cardholders" or "Approving Officials" must first receive approved ethics and credit card purchasing training, complete appropriate Procurement Integrity certifications, and for Cardholders only, obtain a Delegation of Cardholder Authority. Warranted Contracting Officers are not required to obtain a separate Delegating Cardholder Authority. *

* (d) Proposed Cardholders may be credited for the ethics portion of the training if they have completed the CCM self-study course, the COTR self-study course, or Procurement Integrity/Ethics training. At a minimum, credit card purchasing training shall be completed by viewing the Bureau's Government Credit Card Video. Upon completion of the ethics and credit card purchasing training, the Controller or Regional Comptroller must request Cardholder authority for the proposed Cardholder from the Regional Chief, Procurement and Property (for Central Office employees, the Chief, Procurement and Property Branch). *

* Each issuer of Cardholder Delegation of Authority shall maintain a copy of the following documentation: Signed Delegation of Authority Letter, Procurement Integrity Certification, and Certification by EDM of training completion of Procurement/Ethics and Credit Card Training. This documentation must be kept on file **indefinitely** or until cardholder is no longer in the BOP. For staff cardholders transferring from another facility or location a copy of the cardholders delegation authority letter is to be forwarded upon request. *

(e) Prohibited items and disallowed purchases -

* (1) The credit card shall **not**, under any circumstances, be used for: cash advances, rental or lease of land or buildings, travel, major telecommunications (telephone) services, or **any personal items**.*

* (2) Disallowed purchases under the credit card include: meals, lodging, uniform allowance items, rental or lease of vehicles for travel purposes, construction services, incentive

13.301-70 Governmentwide Commercial Purchase Card (Continued)

awards (except for those purchased by Human Resource Departments), or advisory and assistance services. *

- * (f) Once reconciled and approved by AO, files shall be maintained by Cost Center Managers or designee. *

Under no circumstances shall the credit card be used for personal purchases. Violations may result in disciplinary actions.

(g) The overall responsibility for the integrity of the Credit Card Program is with the individual Cardholder. However, the Approving Official shall ensure each purchase is in accordance with policy, and in the best interest of the Government. Accordingly, Program Review objectives shall be added to each discipline's guidelines to monitor program compliance.

- * (h) Annually, the Agency Program Coordinator (Controller) must ensure a random review is conducted of Approving Officials' (Cost Centers) files to ensure credit card purchases comply with policy (e.g., statement reconciliation, mandatory sources, prohibited or personal use items, conformance to the Cost Center's mission, etc.). The review shall also consider any evidence that someone other than the Cardholder is making purchases with the credit card. The Controller shall maintain documentation of the reviews, identifying any deficiencies found, required corrective action taken, and if applicable, any follow-up action with a copy forwarded to the Regional Comptroller. *

- * (i) The Regional Comptroller (or Regional designee) shall randomly review at least five Approving Officials' (Cost Centers) files at each institution to determine program compliance once during the fiscal year. Additionally, the Regional Comptrollers shall review the finding of the Controller's review (see paragraph h above) to ensure compliance. A written report of the review identifying deficiencies and any corrective action (if applicable) shall be prepared and forwarded to the Chief, Procurement and Property Branch. *

(j) It is the Cardholder's responsibility to safeguard the credit card and account number at all times. Staff are reminded to take the necessary precautions to ensure that under no circumstances are inmates to have access to a card number (i.e., by processing/filing records, when placing orders by telephone, etc.). The Cardholder must not allow anyone to use his/her card

13.301-70 Governmentwide Commercial Purchase Card (Continued)

or account number. A violation of this security and trust may result in disciplinary action.

(k) It is the Cost Center Manager's responsibility to maintain records of credit card purchases for a period not less than three years. The records are to be maintained in systematic, chronological order to facilitate review. The file shall include, at a minimum, copies of monthly Cardholder statements, monthly Approving Official summary statements, Credit Card Purchase Forms listing items purchased, and any available packing slips or receipts. The Approving Official shall ensure the statements are reconciled monthly, ensuring the products or services acquired met the Bureau's minimal needs, were not personal convenience items, and conformed to the department's mission. Fund Control shall be in accordance with the Budget Execution Manual.

(l) Contracting questions and concerns regarding Delegation of Cardholder Authority, designation of Approving Officials or Cardholders, should be addressed to the Regional Chief, Procurement and Property. Procedural questions regarding monthly Cardholder purchase limits, approval and payment of the credit card charges, shall be directed to the Regional Comptroller.

13.302-70 - Purchase Order Preparation - General

- * (a) Competition approval thresholds listed in BPAP Part 6 apply to all acquisitions processed by the SAP. *
- * (b) Clearances - Whenever it is contemplated that a purchase is to be made outside a mandatory source of supply (such as UNICOR, General Services Administration (GSA) store stock orders \$5,000 and above per line item), a clearance must be obtained and made a part of the purchase document. A clearance need not be requested for blind-made or UNICOR products purchased from GSA, since those agencies have complied with applicable regulations. *
- * (c) Purchase Order - BP-108, SF-1449, (Solicitation/Contract/Order for Commercial Items), (or replacement), GSA Form-1781 (GSA Motor Vehicle Requisition) and SF-344 (Multiuse Standard Requisitioning/Issue System Document [available through the GSA Catalog]), or any GSA electronic order forms, providing the Contracting Officer incorporates the accounting, receiving, and payment information and Contracting Officer's Signature on the file copies. The Chief PPB may approve other forms, if appropriate. It shall be the Contracting

13.302-70 - Purchase Order Preparation - General (Continued)

Officer's responsibility to complete the following data, unless otherwise specified, in each Purchase Order document.

- * (1) Contractor name and address; *
- (2) The IG (Inter-Governmental) block, designation codes, recycling codes, and stores indicator;
- (3) Name of Institution issuing Order or Contract;
- (4) Request for Purchase Number;
- (5) Bill and Ship To;
- (6) Solicitation Information;
- * (7) Purchase/Delivery/Task Order (or YREGDOC number), and/or Contract Number; *
- (8) Time for Delivery;
- (9) Discount Terms;
- (10) FOB Point;
- (11) Item Number;
- (12) Articles or Services, Quantities, Unit, and Unit Price Amount;
- (13) Totals;
- (14) Effective Date of Award;
- * (15) Miscellaneous items (e.g., delivery hours, variation in quantity, etc.); and Material Safety Data Sheets (MSDS). *
- (16) Any other pertinent information.
- * **Note:** The Fund Code, Account Class, YREGDOC, Project, and Sub-object are to be provided by the Cost Center Manager (CCM), Accounting or Budgeting. *

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PART 14. - SEALED BIDDING

SUBPART 14.2 - SOLICITATION OF BIDS

14.201-70 - Forms for and Preparation of Solicitations

- * Preparation of Solicitation - The Bureau shall use an SF-1449, SF-1442, or other prescribed form. In the interest of uniformity, the following format is prescribed for the preparation of solicitations: *

(a) Show the date actually issued, instead of the date of preparation.

(b) Show "JUSTICE - PRISONS," and name and address of the institution/Regional Office issuing the solicitation.

(c) Name and address of where administered, if different from paragraph (b) of this Subpart.

(d) Enter the symbol number of the appropriation and the allotment designation; for special repair and improvement items, the special allotment number; and indicate the purpose of the invitation, (i.e., 3rd Qtr. Subsistence, Construction, Dwellings Project, Repairs to Hospital, Renovating Admission and Orientation (A&O), Priority, and Special approval for equipment items as appropriate, etc.).

14.204 - Records of Invitations for Bids and Records of Bids

14.204-70 - Solicitation Files

- * For easy reference and uniformity, solicitation and contract files will be maintained in accordance with the Procurement TRM. *

SUBPART 14.3 - SUBMISSION OF BIDS AND AWARD OF CONTRACT

14.302 - Bid Submission

When authorized by the solicitation, telegraphic and/or facsimile bids may be accepted.

SUBPART 14.4 - OPENING OF BIDS AND AWARD OF CONTRACT

14.401-70 - Recording the Receipt of Bids

Time/date stamps will be used to establish time of receipt. Bid envelopes will be stamped and maintained in the solicitation or contract files as documentary evidence to establish conclusively time of receipt.

Where time/date stamps are not available, receipt shall be evidenced by the receiving official (evidence of date and time over the signature of receiving official). Receipt shall be written on bid envelope or cover.

14.402 - Opening of Bids

14.402-70 - Deposits Received with Bids

If bids are accompanied by deposits (i.e., checks, drafts, money orders), the deposits shall be listed on the abstract and turned over to the Controller. If award is delayed more than 48 hours, the deposits shall be turned over to the Cashier for deposit to the location's suspense account. When award is made prior to the expiration of the 48-hour period, the deposits on the unsuccessful bids shall be returned with a transmittal letter. Deposits for successful bids shall be turned over to the Cashier promptly after award.

14.404-70 - Cancellation of Invitations after Bid Opening

The Regional Chief, Procurement and Property shall review the request and all supporting documentation and recommend appropriate action. A memorandum containing the Regional Chief's, Procurement and Property recommendation and describing the circumstances which allow cancellation, shall be forwarded for approval to the Chief, Procurement and Property Branch, who shall seek advice from the Office of General Counsel, as appropriate.

Requests to cancel a solicitation after bid opening shall be routed through the applicable Chief Executive Officer to the Regional Director.

- * If no bids are received for a solicitation, the Regional Chief shall review the possible reasons for the non-receipt of bids and inform the appropriate Regional Administrator of details. *

14.404-3-70 - Notice to Bidders of Rejection of All Bids

Upon determination of the Chief, Procurement and Property Branch, that cancellation/rejection of all bids is in the best interest of the Bureau, the Contracting Officer shall notify each bidder in writing using SF-30. Notification shall include the reasons for rejection of all bids.

14.407 - Mistakes in Bids

14.407-1-70 - General

Requests to allow a correction of a mistake in bid will be fully documented in accordance with FAR 14.407 and routed through the Regional Chief, Procurement and Property for approval, to the Chief, Procurement and Property Branch, who shall seek advice from the Office of General Counsel, as appropriate.

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PART 15. - CONTRACTING BY NEGOTIATION

**SUBPART 15.2 - SOLICITATIONS AND RECEIPT OF PROPOSALS AND
INFORMATION**

*** 15.207-70 - Handling Proposals and Information**

The procedures for receipt and handling of proposals and quotations in negotiated and/or SAP acquisitions will be the same as those outlined in the receipt and safeguarding of bids in sealed bidding (FAR 14.401 and BPAP 14.401-70). *

SUBPART 15.3 - SOURCE SELECTION

*** 15.303 Responsibilities of the Source Selection Authority
(SSA) Privatized Corrections Contracts**

The Administrator, Privatization and Special Projects Branch, Community Corrections and Detention Division, shall serve as the Source Selection Authority for the acquisition of private secure corrections and detention services as required by the BOP.

The source selection authority shall be responsible for developing and submitting to the Contracting Officer the source selection strategy and written acquisition plan which must identify milestones, objectives, and other significant information.

(a) The acquisition plan shall be developed as soon as the agency need for the services is identified. Planning shall be coordinated with the Contracting Officer; and the planner shall secure the concurrence of the Contracting Officer in all acquisition planning. The acquisition plan shall, at a minimum include:

(1) Statement of need;

(2) All significant conditions affecting the acquisition (e.g., compatibility requirements where contractor must interface with BOP or any other BOP specific performance constraints);

(3) Cost goals for the acquisition and supporting rationale;

(4) The required performance standards for the services being acquired;

**15.303 Responsibilities of the Source Selection Authority (SSA)
Privatized Corrections Contracts (Continued)**

- (5) Performance period requirements;
 - (6) The expected consequences of trade-offs, if any, for cost or performance;
 - (7) The technical, cost, or schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals;
 - (8) Plans and procedures for acquisition streamlining;
 - (9) Prospective sources;
 - (10) A description of how competition will be sought, promoted and sustained throughout the acquisition;
 - (11) The source selection procedures for acquisition;
 - (12) Budgeting and funding, including budget estimates and how derived; additionally, which the schedule for obtaining adequate funds at the time they are required;
 - (13) A performance based description of the required services;
 - (14) Government property to be furnished to contractors;
 - (15) Information, such as manuals, to be provided to prospective offerors and contractors;
 - (16) The applicability of an environmental assessment or environmental impact statement.
- (b) Developing and submitting a Source Selection Plan (SSP) which includes:
- (1) Request for Contract Action (including the Statement of Work and funds availability certification);
 - (2) Independent Government Estimate;
 - (3) Evaluation Factors (including sub-factors);
 - (4) Evaluation Team Members; and

**15.303 Responsibilities of the Source Selection Authority (SSA)
Privatized Corrections Contracts (Continued)**

(5) Projected contract milestones.

The SSP shall be submitted at least 60 calendar days before issuance of the solicitation.

(c) Submitting a source selection recommendation for award to the Contracting Officer. The recommendations shall include the rationale for the recommendation. *

15.304-70 - Evaluation Factors and Significant Subfactors

- * Evaluation factors shall be prepared by the office requiring the service or supply. To obtain Full and Open Competition, Contracting Officers shall ensure the factors are not unduly restrictive. Contracting Officers have the authority to reject evaluation factors if they appear to be unrealistic or unduly restrictive. Past Performance shall be included for all competitively negotiated procurements. *

15.305-70 - Proposal Evaluation Team

- * (a) An evaluation team consisting of at least three members shall meet to review and score each technical proposal. The panel shall consist of Bureau staff who are technically capable of evaluating the proposals. *
- * (b) For Community Corrections Contracting contracts, the Community Corrections Regional Administrator or the Office of Community Corrections, shall appoint team members in writing and designate the Chairperson. *
- * (c) For Architect and Engineering Contracts, and/or Design Build the Regional Director (for Central Office, the Deputy Assistant Director for Administration) shall appoint team members in accordance with BPAP 36.602-71. *
- * (d) For Privatized Corrections Contracts, the Administrator, Privatization and Special Projects Branch, shall appoint team members in writing and designate the Chairperson. *
- * (e) The Chairperson of the evaluation team shall furnish, to the Contracting Officer, a summary of findings for all of the proposals in accordance with FAR 15.305(a)(2)&(3). *

*** 15.305-71 - Cancellation of Request for Proposals after Closing Date**

- * The applicable Chief Executive Officer shall submit any request to reject all proposals to the Regional Director for approval.**
- * The Regional Chief, Procurement and Property shall review the request and all supporting documentation. ***
- * A memoranda containing the Regional Chief, Procurement and Property recommendations and describing the circumstances which will allow for cancellation shall be forwarded for approval to the Chief, Procurement and Property Branch, who shall seek advice from the Office of General Counsel, as appropriate. If no offers are received for a solicitation, the Regional Chief shall review the possible reasons for the non-receipt of offers and inform the appropriate Regional Administrator of details. ***

**15.305-71 - Cancellation of Request for Proposals after Closing Date
(Continued)**

When approval for cancellation of a solicitation has been obtained, notification to offerors shall be made via SF-30 by the Contracting Officer.

15.306 - Exchanges with Offerors After Receipt of Proposals

- * Mistakes in an offer may be resolved during communications or discussions. However, if communications or discussions are not held and if offeror requests permission to correct a mistake in its proposal after the date and time proposals are opened, but prior to award, the request shall be forwarded to the Chief, Procurement and Property Branch, with legal concurrence through the Regional Chief, Procurement and Property (for Central Office, the Chief, Procurement and Property Branch). The Contracting Officer shall forward all available information/documentation which supports the existence of a mistake together with the proposal actually intended. ***

The Chief, Procurement and Property Branch, after consultations with the Office of General Counsel, is authorized to make written determinations permitting correction of mistakes in proposals.

After proposals have been received, written and/or oral discussions shall only be between the contractor and the Contracting Officer. Discussions must be meaningful, documented in writing, and placed in the solicitation file.

SUBPART 15.4 - CONTRACT PRICING

15.406-1 - Pre-negotiation Objectives

The Contracting Officer shall establish pre-negotiation objectives before the negotiation of any pricing action.

*** 15.406-3-70 - Documenting the Negotiation**

Upon completion of negotiations for a contract or modification, the Contracting Officer shall document the file in accordance with FAR 15.406-3. This Summary shall include all pertinent details of the discussions held with each offeror(s), and the material facts, leading to the selection of the contractor selected for award. The documentation shall be commensurate with the dollar threshold and complexity of the acquisition or basis for determining the final negotiated term price. *

SUBPART 15.6 - UNSOLICITED PROPOSALS

15.606 - Agency Procedures

The Bureau has designated the Chief, Procurement and Property Branch, as the point of contact for the receipt and handling of unsolicited proposals (JAR 2815.606).

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PART 16. - TYPES OF CONTRACTS

SUBPART 16.5 - INDEFINITE DELIVERY CONTRACTS

16.505 - Ordering

The Bureau Competition Advocate shall be designated the Ombudsman for task order and delivery order contracts, in accordance with FAR 16.505(b)(4).

SUBPART 16.6 - TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

16.603 - LETTER CONTRACTS

16.603-3 - Limitations

The Chief, Procurement and Property Branch, has been delegated authority to approve Letter Contracts, Time-and-Materials, Labor-Hour, and all related determinations.

A written determination that no other contract is suitable shall be prepared by the Contracting Officer. The determination shall be forwarded through the Regional Chief, Procurement and Property to the Chief, Procurement and Property Branch, for approval. Approval must be obtained prior to execution of a Letter Contract.

PART 17

SPECIAL CONTRACTING METHODS

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SUBPART 17.5 - INTERAGENCY ACQUISITIONS

17.501 - Definitions

* **Interagency Agreement (IAG)**: Formal agreements with other Federal Agencies for goods and/or services provided by one supplier agency to one or more receiving agencies under authority of the Economy Act, 31 U.S.C. § 1535. IAGs define the responsibilities of the parties to the agreement **to include financial responsibilities** for services provided in the agreement. The term of the agreement may be for multiple years. The Director has delegated authority to the Regional Directors and the Chief, Procurement and Property Branch to sign IAGs. This signatory authority has been delegated to the Regional Directors with the concurrence of the Regional Chiefs for IAGs affecting their Regional Office or facilities within that Region (See Attachment 17-A, TRM). *

Interservice Support Agreement (ISA): The ISA is the military equivalent of the IAG. A formal agreement that defines recurring services to be provided by one supplier (usually a military organization) to one or more receiving agencies and **defines the basis for calculating reimbursement charges for the services**. The Federal Bureau of Prisons (Bureau) may enter this type of agreement under authority of the Economy Act, 31 U.S.C. § 1535. The term of the agreement may be for multiple years. The Director has delegated authority to sign ISAs to the Chief, Procurement and Property Branch.

Memorandum of Agreement (MOA): A formal agreement (usually initiated by the military) defines general areas of responsibility and agreement between two or more parties. This type of agreement **may include general financial requirements**. MOAs that establish responsibilities for recurring support are supplemented with ISAs that detail specific services and define the basis for reimbursement. The term of the agreement may be for multiple years. The Director has delegated authority to sign MOAs to Regional Directors and the Chief, Procurement and Property Branch. This authority has been delegated to Regional Directors for MOAs affecting their Regional Office or facilities within that Region. MOAs that do not include reference to financial requirements or expectations may be signed locally by facility Chief Executive Officers with the Regional Director's concurrence.

17.501 - Definitions (Continued)

Memorandum of Understanding (MOU): As defined by the military: MOUs define areas of mutual understanding between two or more parties and identify expectations of recurring support. The definition of this type of agreement is synonymous with that of the MOA. The military often uses MOAs and MOUs interchangeably. Signature requirements are the same for MOAs and MOUs.

Memorandum of Understanding (MOU): As defined by the Bureau: MOUs define areas of mutual understanding between two or more parties and usually comprise the trade of services benefiting all parties without financial compensation. **MOUs do not involve the obligation of funds by any of the parties to the agreement.** The term of the agreement may be for multiple years. Chief Executive Officers are delegated authority to sign this type of MOU with the concurrence of the Regional Director (See Attachment 17-B, TRM).

- * **Intergovernmental Agreements (IGA):** Agreements between the Bureau and one or more governments other than the Federal Government (States, Territories, Commonwealths, County, City) for goods and/or services provided by any of the parties to the other parties, either **in exchange for appropriate reimbursement** or for services provided by the other parties. The Federal Bureau of Prisons (Bureau) may enter this type of agreement under authority of 18 U.S.C. The term of the agreement may be for multiple years, not to exceed three years (18 U.S.C. 4002). The Director has delegated authority to sign IGAs to the Chief, Procurement and Property Branch. *

Intra-Agency Agreement - Reimbursement Agreement (RA): Agreements **between one or more Department of Justice (DOJ) Organizations only** (e.g., DOJ, Justice Management Division, U.S. Marshals, Immigration and Naturalization, etc.) for goods and/or services provided by one or more DOJ supplying organizations to one or more DOJ receiving organizations (See Attachment 17-E, TRM). The performance period for this type of agreement does not usually cross fiscal years. Most RAs are paid out of appropriated funds and must be renewed annually. The Director has delegated authority to sign RAs to the Regional Directors and the Chief, Procurement and Property Branch. This authority has been delegated to Regional Directors for RAs impacting their Regional Office or facilities within that Region. *

17.502 - General

RAs shall be completed using DOJ Form 216. All other agreements referenced in 17.501 may vary in format and shall include, at a minimum, the following provisions:

- (a) **Authority** - The authority is the Federal Statute authorizing the Bureau to enter a particular Agreement (not required for MOUs or MOAs not involving the obligation of funds by any of the parties to the agreement). The Economy Act is the appropriate Federal Statute for use with IAGs. Federal Statutes for IGAs will vary with the intent of the Agreement.
- (b) **Estimated Amount** - The total estimated amount of reimbursement for Agreements involving funding shall be stated. When possible a "not to exceed" statement should be provided to limit financial exposure.
- (c) **Period of Agreement** - The term of the Agreement shall be identified. If the term cannot be specified, the period of agreement shall be expressed as "indefinite."
- (d) **Modification** - Modifications may be initiated by any party to the Agreement and shall be mutually agreed upon in writing.
- (e) **Termination** - Termination shall be mutually agreed upon in writing by the parties. If notice is required before termination, the length of notification time shall be specified.
- (f) **Antideficiency Act** - All Agreements involving funding shall include the statement:

"Nothing contained herein shall be construed to obligate the Federal Bureau of Prisons to any expenditure or obligation of funds in excess or in advance of appropriations in accordance with the Antideficiency Act, 31 U.S.C. § 1351."

A memorandum documenting a review for legal sufficiency and compliance with policy shall be prepared to support all Agreements prior to execution. Legal reviews shall be conducted by the Regional Legal Counsel.

17.503 - Determination and Finding Requirements

A Determination and Finding (D&F) shall support all IAGs prepared under authority of the Economy Act. The D&F shall be signed by the Program Representative (for a regional facilities project, the Regional Facilities Administrator) and the appropriate Bureau approving authority for the IAG (See Attachment 17-F, TRM).

Consideration must be given to Federal Acquisition Regulation (FAR) Subpart 7.3, Contractor Versus Government Performance, requirements when determining that interagency acquisition is in the best interest of the Government. Work previously performed by a private contractor may be transferred to in-house Government performance only after a detailed cost comparison in accordance with Office of Management and Budget (OMB) A-76 establishes that in-house Government performance is more effective.

PART 19

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PART 19. - SMALL BUSINESS PROGRAMS

SUBPART 19.7 - SUBCONTRACTING WITH SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS, AND WOMEN OWNED BUSINESS CONCERNS

19.704 - Subcontracting Plan Requirements

(a) Subcontracting Report for Individual Contracts (SF-294)
(Attachment 19-A, Procurement TRM), Part 19): SF-294s shall be submitted semiannually to the Procurement and Property Branch by October and April 15th of each year.

(b) Summary Subcontract Report (SF-295) (Attachment 19-B, Procurement TRM, Part 19): SF-295s shall be submitted annually (or immediately after the contract completion) to the Procurement and Property Branch by October 20th of each year.

19.705-2 - Determining the Need for a Subcontracting Plan

The determination that a particular contract has no subcontracting possibilities must be made in writing and approved as follows:

Determination Made By

Approval Required By

Institution Contracting Officer

Regional Chief, Procurement and Property

Regional and Central Office
Officer

One level above the Contracting
Contracting Officer

*

19.705-4 - Reviewing the Subcontracting Plan

The Contracting Officer (Institution/Region) is to ensure that the Regional Chief, Procurement and Property, reviews Subcontracting Plans for compliance with established FBOP Small Business Goals prior to incorporation of the plan into the contract. For Central Office, contracts are reviewed at one level above Contracting Officer.

The Contracting Officer must perform semi-annually reviews of all Contractor's Subcontracting Plans to ensure that good faith effort is made to meet the established goals. Also, the Contracting Officer must ensure that the contract is adequately documented to reflect all review findings.

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PART 22

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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PART 22. - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

SUBPART 22.1 - BASIC LABOR POLICIES

22.101-3 - Reporting Labor Disputes

The Contracting Officer shall immediately report to the Chief, Procurement and Property Branch, any potential or actual labor disputes that may interfere with the performance of any contract for which they are responsible.

22.101-4 - Removal of Items from Contractor's Facilities Affected by Work Stoppages

Prior to taking any action to remove items from a contractor's facility, Contracting Officers shall contact the Chief, Procurement and Property Branch, for instructions.

22.103-5 - Contract Clauses

The Contracting Officer shall include the clause at FAR 52.222-1, "Notice to the Government of Labor Disputes" in all construction contracts.

SUBPART 22.6 - WALSH-HEALEY PUBLIC CONTRACTS ACT

22.608-3 - Protests Against Eligibility

Any disagreements over eligibility determinations made by Bureau Contracting Officers shall be referred to the Chief, Procurement and Property Branch, before taking any action prescribed by the FAR.

22.608-6 - Post-award

The Contracting Officer shall contact the Chief, Procurement and Property Branch, for instructions before notifying the Department of Labor (DOL), (see BPAP Part 49), prior to any contract termination procedure.

SUBPART 22.8 - EQUAL EMPLOYMENT OPPORTUNITY

22.803 - Responsibilities

Questions concerning the applicability of Executive Order 11246, "Nondiscrimination Under Federal Contracts" shall be referred to the Chief, Procurement and Property Branch.

22.805 - Procedures

Copies of DOL posters entitled "Equal Opportunity is the Law" may be obtained upon written request from:

Office of Federal Contract Compliance Programs
Department of Labor
Room C-3325
200 Constitution Ave. NW
Washington, DC 20210

22.807 - Exemptions

Requests for exemption to the requirements of Executive Order 11246 shall be submitted through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch.

22.808 - Complaints

The Contracting Officer shall immediately advise the Chief, Procurement and Property Branch, through the Regional Chief, Procurement and Property, of any complaints prior to referral to the Office of Federal Contract Compliance Programs.

SUBPART 22.13 - SPECIAL DISABLED AND VIETNAM ERA VETERANS

22.1303 - Waivers

All requests for waivers shall be submitted through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch.

22.1306 - Complaint Procedures

The Contracting Officer shall immediately advise the Chief, Procurement and Property Branch, through the Regional Chief, Procurement and Property, of any complaints prior to referral to DOL.

SUBPART 22.14 - EMPLOYMENT OF THE HANDICAPPED

22.1403 - Waivers

Requests for waiver of the provisions of the Rehabilitation Act of 1973 will be forwarded to the Chief, Procurement and Property Branch, through the Regional Chief, Procurement and Property.

22.1406 - Complaint Procedures

The Contracting Officer shall immediately advise the Chief, Procurement and Property Branch, through the Regional Chief, Procurement and Property, of any complaints prior to referral to DOL.

PART 23

**ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY,
AND DRUG-FREE WORKPLACE**

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**PART 23. - ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND
DRUG-FREE WORKPLACE**

SUBPART 23.1 - POLLUTION CONTROL AND CLEAN AIR AND WATER

23.104 - Exemptions

Requests for an exemption from the requirements of this part must be forwarded through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch.

23.107 - Compliance Responsibilities

Noncompliance with the clean air or water standards shall be reported by the Contracting Officer, in writing, to the Chief, Procurement and Property Branch, through the Regional Chief, Procurement and Property.

**SUBPART 23.3 - HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL
SAFETY DATA**

23.302 - General

It is the responsibility of all Bureau staff to cooperate and be fully alert when requesting, handling, or disposing of hazardous materials. However, the ultimate responsibility for handling and monitoring hazardous materials purchased or disposed of must be the responsibility of the originating requestor or Cost Center Manager (CCM).

The following procedure shall be used for all procurements involving hazardous materials or disposal of hazardous materials:

(a) It shall be the CCM's responsibility to alert the Contracting Officer, in writing on the face of the RP, the materials being requested or disposed of are considered hazardous materials.

The CCM shall include the following statement on the face of the RP:

"The Contractor shall forward Material Safety Data Sheets (MSDSs) for all hazardous materials to the attention of the Safety Manager at the destination address indicated on the Purchase Order or Contract at least one day prior to delivery."

(b) The Contracting Officer shall review all RPs for hazardous material notification contained in BPAP 23.302(a). If the RP contains hazardous material notification, the Contracting Officer shall take the following actions:

23.302 - General (Continued)

(1) For requirements in excess of the Simplified Acquisition Procedure (SAP) include the clause contained in FAR 52.223-3, "Hazardous Material Identification and Material Safety Data," in the solicitation and resulting contract as an addenda to FAR 52.212-4 by notating in Blocks 27a or 27b of the SF-1449.

(2) For Purchase Orders less than or equal to the SAP the Contracting Officer shall include the hazardous material notification contained on the face of the RP in the resulting Purchase Order.

(c) For Purchase Orders or contracts involving the disposal of hazardous waste, the CCM shall prepare a Statement of Work that includes a detailed description of tasks to be performed and all related requirements listed in the Bureau Occupational Safety and Environmental Health Manual.

(d) Receiving staff shall be alert for hazardous material contained in incoming deliveries and follow the procedures outlined in the Bureau Occupational Safety and Environmental Health Manual. Additionally, it shall be the receiving CCM's responsibility to notify the Safety Manager and ensure that the MSDSs are provided to the Safety Office and available at the work site.

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PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

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PART 24. - PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

SUBPART 24.2 - FREEDOM OF INFORMATION ACT

24.202 - Policy

Before making available to prospective contractors the Bureau's rules and regulations concerning the Freedom of Information Act, the Contracting Officer shall consult with institution Legal Counsel, Regional Office Legal Counsel, or the Bureau's Office of General Counsel, as appropriate.

Department of Justice regulations implementing the Freedom of Information Act are located at 28 CFR Chapter 1, Part 16.

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FOREIGN ACQUISITION

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* **PART 25. - FOREIGN ACQUISITION**

SUBPART 25.1 - BUY AMERICAN ACT - SUPPLIES

25.105 - Evaluating Offers

Requests for a decision required by FAR 25.105(c) shall be submitted through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch. *

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BONDS AND INSURANCE

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SUBPART 28.3 - INSURANCE

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PART 28. - BONDS AND INSURANCE

SUBPART 28.1 - BONDS

28.101 - Bid Guarantees

The requirement to obtain a bid guarantee for construction contracts is waived when performance and payment bonds are required under the following conditions:

(a) The construction contract has been set aside for the Small Business Administration's 8(a) Program on a sole-source basis; and

(b) The Contracting Officer has determined a bid guarantee is not in the best interest of the Government.

The solicitation file shall be documented, in writing, as to the basis for the Contracting Officer's determination.

28.105 - Other Types of Bonds

Requests for approval to use other types of bonds allowed by FAR 28.105 shall be forwarded through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch.

28.106-2 - Substitution of Surety Bonds

Requests for approval to substitute a new surety bond for a bond previously approved shall be forwarded to the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch.

28.106-6 - Furnishing Information

Authority to take actions on payment bonds prescribed by FAR 28.106-6(c) is hereby delegated to the:

Chief, Procurement and Property Branch
(for Central Office contracts)

Regional Directors
(for Regional Office contracts)

Chief Executive Officers
(for institution contracts)

SUBPART 28.2 - SURETIES

28.204-70 - Approval of Options in Lieu of Sureties

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When a contractor elects to deposit any of the types of security listed in FAR 28.204 instead of furnishing corporate or individual sureties on payment and performance bonds, the Contracting Officer shall notify, in writing, the Regional Chief, Procurement and Property, describing fully the proposed security. No award shall be made until the Contracting Officer has received approval from the Chief, Procurement and Property Branch (or the Regional Chief if under the Simplified Acquisition Threshold).

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SUBPART 28.3 - INSURANCE

28.307-2 - Liability

Decisions to require property damage liability insurance must be approved in advance by the Chief, Procurement and Property Branch.

PART 33

PROTESTS, DISPUTES, AND APPEALS

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PART 33. - PROTESTS, DISPUTES, AND APPEALS

SUBPART 33.1 - PROTESTS

33.103-70 - Protests Filed with the Bureau

- * (a) When a written protest is filed only with the Bureau prior to award, the Contracting Officer shall immediately notify the Regional Chief, Procurement and Property who shall then promptly notify the Chief, Procurement and Property Branch. The award is not to be made without written approval from the Chief, Procurement and Property Branch, and such award is consistent with the JAR.

The protestor has the option of protesting to the Contracting Officer or to the Agency Protest Official (APO). The Bureau's APO is the Procurement and Property Branch Section Chief responsible for the Claims Analysis and Review Team. If a conflict arises another Section Chief is to be assigned. *
- * (b) If the protestor chooses the APO to decide the protest, the Contracting Officer must notify within one day and provide all materials within three days of filing the protest to the Chief, Procurement and Property Branch, who then forwards it to the APO. A scheduling conference with the protestor will be held within five days after the protest is filed. This conference establishes deadlines for oral or written arguments, and other procedures necessary to resolve the protest.

Contracting Officers and protestors should seek to use alternative dispute resolution techniques to resolve concerns or protests. *
- * (c) If the Contracting Officer is to decide the protest,
 - (1) The Contracting Officer shall immediately prepare a written draft of the Contracting Officer's proposed response letter to the protestor, which shall be forwarded promptly (within 14 calendar days) through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch or his or her designee for review. *
 - (2) Upon review and approval of the Contracting Officer's proposed response letter by the Chief, Procurement and Property Branch, the Contracting Officer shall notify the protestor of the Contracting Officer's decision. Notification shall be made within 30 calendar days by

33.103-70 - Protests Filed with the Bureau (continued)

certified mail with return receipt requested so as to show the date the response letter was delivered to the protestor.

33.104 - Protests to General Accounting Office

(a) General

(1) The General Accounting Office (GAO) will notify the DOJ by telephone within one working day of the filing of a protest with GAO. Upon receipt of such notification, DOJ will promptly notify the Bureau of the protest.

* (2) The Contracting Officer shall notify the Regional Chief, Procurement and Property, and the Chief, Procurement and Property Branch, immediately by telephone, and in writing, upon receipt of a notification of protest. *

* (3) The Chief, Procurement and Property Branch, shall immediately notify the Office of General Counsel. *

* (4) The Contracting Officer shall prepare a draft copy of the agency report responding to the GAO protest and forward it through the Regional Chief, Procurement and Property, to the Chief, Procurement and Property Branch, to be received at least 20 calendar days prior to the due date. The Chief, Procurement and Property Branch must forward a copy to the Office of General Counsel. *

(5) With the exception of the agency response to GAO, all other documents submitted to GAO shall be copies and not the originals, since GAO retains these submittals.

(b) Protests Before Award.

(1) When the Contracting Officer receives notice from GAO of a protest filed directly with GAO, a contract may not be awarded unless authorized by the Director, upon a written finding that:

- (i) Urgent and compelling circumstances which significantly affect the interests of the United States will not permit awaiting the decision of GAO; and
- * (ii) Award is likely to occur within 30 calendar days of the written finding. *

33.104 - Protests to General Accounting Office (Continued)

(2) A contract award **shall not** be authorized until the Bureau has notified GAO of the finding in paragraph (b)(1) of this Subpart.

* (3) When a protest against the making of an award is received and award shall be withheld pending disposition of the protest, the Contracting Officer shall proceed under BPAP 33.103-70(a). *

In the event of failure to obtain an extension of bids or offers, consideration should be given to proceeding under paragraph (b)(1) of this Subpart.

(c) Protests After Award.

(1) When notice of a protest is received from GAO within 10 calendar days after award, the Contracting Officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this Subpart.

(2) Notwithstanding the protest, the Director may authorize contract performance upon a written finding, prepared by the Contracting Officer responsible for the procurement, that:

- (i) Contract performance will be in the best interests of the Government; or
- (ii) Urgent and compelling circumstances that significantly affect the interests of the Government will not permit waiting for the GAO decision.

(3) Contract performance shall not be authorized until the Bureau has notified GAO of the finding in paragraph (c)(2) of this Subpart.

(4) When it is decided to suspend performance or terminate the awarded contract, the Contracting Officer shall first contact the Office of General Counsel to request guidance in negotiating a mutual agreement on a no-cost basis.

* (5) When the Bureau receives notice of a protest filed with GAO more than 10 calendar days after award of the protested acquisition, the Contracting Officer need not suspend contract performance or terminate the awarded contract. However, if the Contracting Officer believes the award may be invalidated and a

33.104 - Protests to General Accounting Office (Continued)

delay in receiving the supplies or services is not prejudicial to the Government's interest, the contract may be suspended. *

(d) Findings and Notice. If the decision is to proceed with contract award, or to continue contract performance under paragraphs (b) or (c) of this Subpart, the Contracting Officer shall include the written findings and other required documentation in the file and provide a copy to the Regional Chief, Procurement and Property. The Contracting Officer shall also provide written notice of the decision to the protestor and other interested parties.

(e) Notice to GAO. If the Bureau will not comply with the recommendation issued by GAO, the Contracting Officer responsible for the solicitation, proposed award or award of the contract, shall prepare a report, for the Director's signature, to be filed with the Comptroller General within 60 calendar days on return of the GAO's recommendation. The report shall explain the reasons why the Bureau will not follow GAO's recommendation. This report will be sent through the Regional Director to the Assistant Director for Administration, Attention: Chief, Procurement and Property Branch, before subsequent forwarding to the Director.

(f) Award of Protest Costs.

(1) The GAO may declare an appropriate interested party to be entitled to the costs of:

(i) Filing and pursuing the protest, including reasonable attorneys' fees; and

(ii) Bid and proposal preparation costs.

(2) Before paying a recommended award of protest costs, Bureau personnel should consult the Office of General Counsel.

33.106 - Solicitation Provision and Contract Clause

The Contracting Officer shall complete FAR clause, 52.233-2, "Service of Protest," by inserting the following information in the space provided in subpart (a):

"...of receipt from **the Chief, Procurement and Property Branch, Federal Bureau of Prisons, 320 First Street, NW, Room 5006, Washington, DC 20534**"

SUBPART 33.2 - DISPUTES AND APPEALS

33.211 - Contracting Officer's Decision

When a dispute with, or a claim by or against a contractor, cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the Contracting Officer shall:

- (a) Review the facts pertinent to the dispute or claim;
- (b) Immediately provide written notice of the dispute or claim to the Regional Chief, Procurement and Property and the Chief, Procurement and Property Branch;
- (c) Coordinate with the Regional Chief, Procurement and Property and the Chief, Procurement and Property Branch, in all efforts to resolve the dispute or claim;
- (d) Prepare a proposed written final decision that shall include:
 - (1) Description of the dispute or claim;
 - (2) Reference to the pertinent contract terms;
 - (3) Statement of the factual areas of agreement and disagreement;
 - (4) Statement of the Contracting Officer's proposed decision with supporting rationale;
 - (5) Include the following paragraph:

"This is the final decision of the Contracting Officer. You may appeal this decision to the Department of Transportation Board of Contract Appeals (DOTBCA), Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the DOTBCA and provide a copy to the Contracting Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. Instead of appealing to the DOTBCA, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision;" and

33.211 - Contracting Officer's Decision (Continued)

(6) Demand for payment prepared in accordance with FAR 32.610(b) in all cases where the decision results in a finding that the contractor is indebted to the Government.

(e) Forward a draft copy of the proposed decision through the Regional Chief, Procurement and Property to the Chief, Procurement and Property Branch, where it shall be reviewed and subsequently forwarded to the Office of General Counsel for review and comment. Upon approval, the decision shall be returned to the Regional Chief, Procurement and Property and forwarded to the Contracting Officer for issuance; and

(f) Send the Contracting Officer's final decision, as approved, to the claimant by certified mail with return receipt requested showing the date the final decision was delivered.

Note: The specific language in paragraph (d)(5) of this section **must** be included in the final decision.

33.212 - Contracting Officer's Duties Upon Appeal

If the Contracting Officer's decision under BPAP 33.211 is appealed to the DOTBCA, the Contracting Officer shall:

(a) Notify the Regional Chief, Procurement and Property and the Chief, Procurement and Property Branch, immediately by telephone, and writing, upon receipt of the notification of appeal;

* (b) Within 15 calendar days after receipt of notice that an appeal has been docketed, assemble and transmit through the Regional Chief, Procurement and Property to the Chief, Procurement and Property Branch an indexed appeal (Rule 4) file consisting of copies of all documents pertinent to the appeal, including:

(1) the claim itself;

(2) the Contracting Officer's final decision on the claim;

(3) the contract, including pertinent specifications, modifications, plans and drawings;

(4) all correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;

33.212 - Contracting Officer's Duties Upon Appeal (Continued)

(5) transcripts of any testimony taken during the course of the proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(6) any additional pertinent information

*

(c) With the exception of the response to DOTBCA, submit copies (not the originals) of all other documents, since DOTBCA retains these submittals; and

(d) Provide data, documentation, information and support as may be required by the Regional Chief, Procurement and Property to the Chief, Procurement and Property Branch, and to the Office of General Counsel for use on a pending appeal from the Contracting Officer's decision.

PART 36

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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Part 36. - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 36.1 - GENERAL

36.101 - Applicability

Construction and Architect-Engineer (A&E) contracts are subject to the requirements in other parts of this Program Statement which are to be followed when applicable.

36.103 - Methods of Contracting

(a) Construction Contracts. For all construction contracts under Simplified Acquisition Procedures (SAP), bidding time shall be sufficient to ensure that all interested bidders have adequate time to review the requirements and submit a bid. However, a minimum of 14 calendar days shall be allowed for submission of bids.

(b) A&E Contracts. A&E services shall be acquired in accordance with FAR 36.6. The procurement authority for A&E services shall not be delegated below the Regional Contract Specialist level, unless specifically authorized in advance and in writing by the Chief, Procurement and Property Branch. The selection of firms for A&E contract negotiations shall be in accordance with the Facilities Management Manual.

SUBPART 36.2 - SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

*** 36.201-70 - Evaluation of Contractor Performance**

Contractor Performance Evaluation Reports (SF-1420, "Performance Evaluation - Construction Contracts") are to be prepared in accordance with FAR 36.201. The Contracting Officer's Technical Representative (COTR) (usually referred to as the Project Representative) is to provide performance information for the report. The Project Representative is to forward the report to the Regional Facilities Administrator (for Central Office, the Project Administrator for the Design and Construction Branch), who reviews the performance report to ensure completeness and accuracy. He or she then returns the report to the Contracting Officer with comments. The Contracting Officer shall assign the final rating and sign the report. If the Contracting Officer determines that a report of unsatisfactory performance is required, the procedures specified in FAR 36.201(a)(3) are to be followed. Evaluation reports are to be maintained in the file, and a copy submitted to the Project Representative and to the Chief, Procurement and Property Branch. The copies are to be

36.201-70 - Evaluation of Contractor Performance (Continued)

maintained for a minimum of six years after the date of the report. *

36.202-70 - Specifications

(a) Prior to issuing a solicitation for construction, the Contracting Officer shall have written documentation certifying that all specifications and drawings have been approved by the Regional Facilities Administrator for institutions, and the Project Administrator, Design and Construction Branch, for Central Office contracts. This certification shall be included in the pre-award file.

* (b) The Contracting Officer shall review the specifications to ensure that no ambiguous language exists and that specifications shall not unduly restrict competition, and if "Brand Name or Equal" is referenced concerning supplies/materials or equipment, the procedures in JAR 2811.104-70 have been followed. *

(c) Specifications in A&E contracts shall comply with FAR Part 11, and shall promote full and open competition.

36.203-70 - Government Estimate of Construction Costs

(a) The Independent Government Cost Estimate (IGCE) shall be treated as confidential and shall be disclosed only to persons whose official duties require knowledge of the information. Before releasing the IGCE, the Contracting Officer shall consult with his/her immediate supervisor.

Note: Anyone having access to the IGCE shall be considered a Procurement Official and shall be subject to the Procurement Integrity Certification.

(b) The institution Facility Manager is responsible for providing the Contracting Officer with an IGCE. The estimate shall be prepared in accordance with FAR 36.203 and furnished with an approved Request for Purchase to the Contracting Officer prior to the initiation of the acquisition process.

36.206 - Liquidated Damages

When the contract provides for liquidated damages and the contractor does not complete the work within the specified time (including any extensions of contract time because of stop-work orders, modifications, etc.), the amount assessed for liquidated

36.206 - Liquidated Damages (Continued)

damages shall be deducted from the final payment and the contractor so advised.

36.206-70 - Liquidated Damages Justification

Before including liquidated damages in a construction contract, the amount must be justified, in writing, by the Regional Facilities Administrator or institution Facility Manager. The final determination for the amount of liquidated damages is the Contracting Officer's responsibility.

36.209 - Construction Contracts with Architect-Engineer Firms

Approval shall be obtained prior to awarding a construction contract to the A&E Firm, or its subsidiaries affiliates, who designed the project. Request for approval shall be by memorandum through the Regional Chief, Procurement and Property to the Chief, Procurement and Property Branch.

36.210-70 - Inspection of Site and Examination of Data

(a) In addition to the requirements of FAR 36.210, the Contracting Officer shall make available the requirements for security and investigative procedures that shall apply under the contract (Human Resource Management Manual).

- * (b) Contracting Officers should hold a pre-bid conference to brief prospective bidders on complicated specifications, institution security requirements, and to allow an opportunity to provide data and to inspect the construction site (FAR 14.207). Pre-bid conferences are not to be used as a means to substitute or amend defective or ambiguous specifications. However, the conference may result in the discovery of defective specifications that must be corrected by an amendment to the solicitation. Because all interested parties may not attend the conference, it is essential that the minutes of the conference be recorded and distributed to all interested parties to the solicitation. A cover letter shall be issued with the minutes, and shall state that the purpose of providing minutes is for informational purposes only and not intended to change any specifications, terms, or conditions of the solicitation. Any changes to the solicitation shall be issued in subsequent amendments. *

**SUBPART 36.3 - SPECIAL ASPECTS OF SEALED BIDDING IN CONSTRUCTION
CONTRACTING**

36.301-70 - General

(a) Wage Determinations. One of the prerequisites to preparation of a construction solicitation anticipated to exceed \$2,000 is to obtain wage determinations from the Regional Office, or request a wage determination from the DOL on an SF-308 at least 30 calendar days prior to advertising the requirement.

Note: Procurement and Property Branch, Construction Contracting Section, subscribes to Davis-Bacon Determination Database for all Federal Government construction contracts and most contracts for Federally assisted construction over \$2,000.

The institution Facility Manager shall provide the Regional Chief, Procurement and Property with the type of construction and the county and state where work shall be performed. The Regional Facilities Administrator or institution Facility Manager shall be responsible for selecting the job classifications on the SF-308 which shall be required in performance of the work. Due to the urgency of some projects, it may be necessary to issue a construction invitation before the wage determination can be obtained from the Department of Labor (DOL). In such instances, a notice shall be included in the schedule that minimum wage rates shall be issued as an amendment to the invitation.

(b) Payroll Investigations. The prime contractor shall be responsible for submitting to the Contracting Officer weekly payrolls on all work performed under the contract, as required by the DOL's Labor Standards for Contracts involving Construction (SF-308). The Contracting Officer shall be responsible for ensuring that posters entitled "Equal Employment is the Law" and a completely legible copy of the prevailing Wage Determination and are posted by the contractor in an area readily seen by workers.

Throughout a construction project, the Contracting Officer, or an authorized representative, shall interview randomly-selected employees as representative of various classifications and trades currently employed on the projects, to assure compliance with labor provisions of the contract. Data obtained in these interviews shall be used in examination of certified payrolls submitted by the contractor. A memorandum of the interviews showing project number, name, date, employer, employee, classification or trade, period of apprenticeship (if

36.301-70 - General (Continued)

applicable), hourly rate of pay, and comments shall be attached to the applicable payroll.

Interviews should not be held in the presence of the employer or the employer's representative. The purpose and need for the interview should be explained to the employee being interviewed.

Projects of short duration (six months or less) shall be reviewed before the work is accepted, if feasible. In cases of contracts which extend over a long period of time, the employee interview shall be conducted with such frequency as may be necessary to assure compliance with statutory labor standards, procedures, and prevailing wage requirements.

(c) Chronological Record of Progress. For each construction project, the institution Facility Manager (or Project Representative) shall supervise the operations and maintain a complete record of progress under the contract. This record of progress shall become a part of the official contract file. A record sheet shall be established to show the essential progress information in chronological order under the following: Contract number, name and address of contractor, brief description of the project, contract price, date of contract, time required for completion, time contractor received notice to proceed, and dates and durations of stop-work orders, if any, issued by the Government. The record should be so complete that no question remains in the event the contractor claims an extension of contract time, or remission of liquidated damages, etc. The Project Representative shall monitor the contractor's progress and provide status reports with each pay application (or as required by the Contracting Officer). The reports shall be submitted directly to the Contracting Officer. Additionally, a status report shall be provided immediately whenever:

(1) The work is not proceeding on schedule. In such event, the Contracting Officer shall put the contractor on notice, in writing, with copies furnished to the Regional Chief, Procurement and Property, the Facilities Administrator, the surety providing bonds, and the contract file;

(2) A modification to the contract may be required (e.g., change orders, time extension, stop-work order, etc.); or

(3) The contract work is not being accomplished according to specifications. In such event, the Contracting Officer shall put the contractor on notice, in writing, with copies furnished to the Regional Chief, Procurement and Property, the Facilities

36.301-70 - General (Continued)

Administrator, the surety providing the bonds, and the contract file.

36.301-71 - Pre-Construction Conference

Prior to the start of construction, the Contracting Officer shall call a conference with the contractor, sub-contractor(s), Chief Executive Officer, Controller, Safety Manager, Facilities Administrator, Project Representative, A&E, Captain and other interested personnel to discuss the statutory labor standards, prevailing wage requirements, submission of contractor's payrolls, sub-contractor's responsibilities, institution work schedules, local policies, contraband, parking, storage of vehicles and equipment, etc. Minutes of the conference shall be recorded, listing the names and titles of all in attendance and the subject matter of all items covered. The minutes shall be signed by the contractor and the Contracting Officer, and a signed copy filed in the contract.

SUBPART 36.6 - ARCHITECT-ENGINEER SERVICES

The Bureau shall evaluate each potential A&E Firm in accordance with the selection criteria outlined in FAR 36.602-1 and the Facilities Management Manual.

36.602-71 - Evaluation Boards

- * The Regional Director, (or designee), shall appoint evaluation board members for A&E services, which shall only consist of members that collectively have experience in architecture, engineering, construction, and related acquisition matters. The evaluation board shall consist of a minimum of three members, one being the Regional Facilities Administrator (or designee), (for Central Office, the Project Administrator for the Design and Construction Branch), who may act as Chairperson. *

36.604-70 - Performance Evaluations

The A&E performance evaluation reports shall be prepared in accordance with procedures outlined in FAR 36.604. Performance evaluation reports shall be prepared for each A&E contract of more than \$25,000, and for all contracts of \$25,000 or less when performance is unsatisfactory.

36.604-70 - Performance Evaluations (Continued)

The performance evaluation report shall be prepared by the Project Representative. The report shall be prepared at the time of final acceptance of the work, or at the time of contract termination.

After the report has been prepared, a copy shall be retained with the A&E's SF-254/255 (Architect-Engineer and Related Services Questionnaire), and the original SF-1421 (Performance Evaluation-Architect-Engineer) shall be forwarded to the Regional Facilities Administrator, who shall subsequently forward it to the Contracting Officer for filing with the original contract.

Once the report has been approved, the Contracting Officer shall provide copies to the Chief, Design and Construction Branch and the Chief, Procurement and Property Branch.

*** 36.608 - Liability for Government Costs Resulting from Design Errors, Omissions, and Deficiencies**

The Contracting Officers must review and document, in the file, all technical recommendations on errors, omissions, and deficiencies. *

PART 37

SERVICE CONTRACTING

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PART 37. - SERVICE CONTRACTING

SUBPART 37.1 - SERVICE CONTRACTS - GENERAL

37.102 - Policy

Applicable statutes and Government-wide regulations provide that requirements for personal services will generally be satisfied only by appointing individuals in accordance with Office of Personnel Management (OPM) regulations. These statutes and regulations shall not be circumvented by contracting for personal services. However, contracts for professional non-personal services, properly written and administered, represent an approved means for accomplishing Bureau programs and objectives.

Advertising in the Commerce Business Daily for non-personal services contracts may not generate sufficient competition, particularly in small communities. Therefore, Contracting Officers are encouraged to utilize the local advertising media to further enhance competition, in accordance with FAR Part 5.1 and BPAP 5.5.

- * Each Cost Center Manager (CCM) or Contracting Officer Technical Representative (COTR), shall provide a written evaluation of the services provided and the performance of the contractor to the Contracting Officer in accordance with Part 42.15 (Attachment 37-A, of the Procurement TRM or similar form).

Interim Performance Reports: Not less than annually (e.g., within 30 days of the completion of each base and option year of a contract), or within 30 days of 50% completion of a contract (option years are not applicable).

Final Performance Reports: Within 30 days of completion of a contract.

A copy of all performance evaluations will be filed in the contract file (or when applicable, the contract administration file).

*

37.103 - Contracting Officer Responsibility

- (a) For services to be performed, the Contracting Officer shall:
 - (1) Obtain from the CCM a completed Request for Purchase (RP)/Request for Contract Action (RCA) addressing all elements

37.103 - Contracting Officer Responsibility (Continued)

listed in BPAP 37.103-71. The CCM is responsible for ensuring a proposed contract for services is proper; and

(2) For all nonpersonal services contracts, ensure text stating the contract does not constitute an employer/employee relationship, is located in the contract Statement of Work (SOW).

(b) Security requirements, as outlined in the Human Resource Management Manual, apply to all services performed at Bureau facilities, and certain other services performed outside the institution when covered under other Program Statements (e.g., Guard Service, Community Corrections Contracting (CCC), etc.). The Contracting Officer will ensure prospective contractors agree to investigative procedures by incorporating the following requirements into the solicitation/bid/proposal package:

- (1) National Crime Information Center (NCIC) check;
- (2) DOJ-99 (name check);
- (3) FD-258 (fingerprint check);
- (4) Law Enforcement Agency checks;
- * (5) Vouchering of Employers; *
- (6) Resume/Personal Qualifications;
- (7) OPM-329-A (Authority for Release of Information); and
- (8) National Agency Check and Inquiries (NACI) check (if applicable)

- * The Contracting Officer shall ensure each prospective contractor is advised during the solicitation or quotation phase that a urinalysis test is required (for detection of marijuana and other drug usage). If the proposed contract is with a company and the individual(s) assigned to perform the work test(s) positive, the individual(s) shall be excluded from performing the contract and the contractor shall provide acceptable replacement personnel subject to the same security requirements. If the proposed contract is with an individual, the contract award may not be made until a negative test is received. *

- * **Note:** Prior to performance, the Contracting Officer shall obtain (from the Personnel Officer or the appropriate CCM) written assurance that investigative procedures have been completed pursuant to the current Human Resource Management Manual. For individuals this requirement must be completed prior to award. When a NACI check is required, the requirement must also be

37.103 - Contracting Officer Responsibility (Continued)

initiated, but not necessarily completed, prior to performance.

*

(c) If the contract is for a service performed at a Bureau facility, the SOW or contract shall contain such provisions as:

(1) The service is a contractual arrangement and not a personnel appointment;

(2) Payment is based on the provision of an end product or the accomplishment of a specific result;

(3) The service does not constitute an employer/employee relationship; and

(4) The contractor will not be subject to Government supervision, except for security related matters. However, contractor performance shall be closely monitored.

* (d) The Contracting Officer shall ensure contract compliance, and may appoint a COTR in accordance with JAR 2801.70. The recommended clause to delineate COTR responsibility and authority is found in JAR 2852.201-70, and may be included as an addenda to FAR 52.212-4 by notating in Block 27a or 27b of the SF-1449, or so indicated on other prescribed forms. This clause further states that the COTR shall ensure compliance with all aspects of the Statement of Work (SOW). *

37.103-71 - Cost Center Manager Responsibility

The CCM is responsible for the following:

* (a) Conduct market research in accordance with FAR Part 10 (Construction Services, Community Corrections and Detention Division Contracts are exempt because they are not commercial items). *

(1) Estimated cost of services, which may, among other things, be based upon the prior year's experience (e.g., cost of operating the previous year plus any economic or requirements adjustments). For a new contract with no prior year's experience, the CCM shall estimate the cost based upon experience with established contractors and an estimate of required work;

37.103.71 - Cost Center Managers Responsibilities (Continued)

(2) Identification of Sources. The CCM shall identify potential contract sources. Initial resources to consult regarding available sources are the local telephone directory, hospitals, universities, current contractors, etc.

(b) Determination of Need. Within the acquisition lead times established in Part 7, the CCM shall submit to the Contracting Officer a RP/RCA addressing the following:

(1) Purpose of Contract;

* (2) Description of services required/SOW - The SOW shall provide, at a minimum, a specific description of the services to be performed, and delivery schedule. The SOW shall also include requirements listed in relevant Bureau Program Statements and other regulatory requirements. The SOW must neither be so narrow as to restrict competition unduly or to restrict the contractor's efforts, nor so broad as to permit the contractor to stray into peripheral areas in performing the required work; the SOW must also include expected performance-based standards and incentives, if applicable. *

* (3) Evaluation Selection Criteria - CCMs shall provide evaluation selection criteria as outlined in BPAP Part 15, to include Past Performance. *

(4) Existing OPM positions which may be supplemented by this contract;

(5) Reasons why services cannot be accomplished by OPM positions already assigned;

(6) Academic, experience, and/or special qualifications required;

(7) Management, consultant, advisory, evaluative, or analytical services to be provided;

(8) Reasons for determining that services to be provided are to be unsupervised and non-personal in nature;

(9) A determination made by the CCM that the proposed services is proper for a non-personal services contract using the definitions in FAR 37.101 and the guidelines in FAR 37.104.

37.103.71 - Cost Center Managers Responsibilities (Continued)

(c) Submit all proposed contracts with individuals for non-personal services requirements, which requires the contractor to work more than 30 hours per week, to the Regional Director for approval.

(d) The CCM who receives the contractor's services shall be responsible for conducting the appropriate vouchering and law enforcement checks, as well as ensuring that the appropriate fingerprinting and urinalysis testing is completed in accordance with the Human Resource Management Manual to include the following:

- (1) National Crime Information Center (NCIC) check;
- (2) DOJ-99 (name check);
- (3) FD-258 (fingerprint check);
- (4) Law Enforcement Agency checks;
- (5) Vouchering of Employers over past five years;
- (6) Resume/Personal Qualifications;
- (7) OPM-329-A (Authority for Release of Information); and
- (8) NACI - (if applicable)

37.106 - Funding and Term of Service Contracts

Prior to funding any base or option of a severable service contract under the authority of FAR 32.703-3(b) or 37.106(b), approval shall be obtained from the Chief, Budget Execution Branch, Central Office. The request shall contain the concurrence of the Controller and Regional Comptroller prior to being forwarded to the Central Office. It shall be the CCM's

responsibility to obtain all such approvals prior to forwarding to the Contracting Office. A copy of the approval shall be filed in accordance with procedures outlined in BPAP Part 7.105-70.

37.112-70 - Government Use of Private Sector Temporaries

"Temporary Private Sector Services" are defined as temporary help acquired from temporary help service firms for meeting short term temporary work needs (5 CFR Part 300).

(a) Services that may be acquired. Temporary services may be contracted through the private sector to temporarily replace any service provided by a Civil Service position assigned. Positions classified as managerial, supervisory, or consultants may not be filled by temporaries.

**37.112-70 - Government Use of Private Sector Temporaries
(Continued)**

(b) Criteria Requirements.

(1) One or more of the following short-term situations must exist:

- (i) Unforeseen personal need (including illness, parental or family responsibilities);
- (ii) Mandatory jury duty;
- (iii) Permanent change of duty for the benefit of the Government;
- (iv) Work critical to the operation, which in the judgement of the agency, cannot be delayed; or
- (v) The need cannot be met with current staff or "appointment" of temporary employees.

(2) The services are not:

- (i) In lieu of regular recruitment and hiring procedures under Civil Service Law;
- (ii) To displace a Federal employee;
- (iii) To supplement current staffing above authorized position guidelines; or
- (iv) Creating an employer/employee relationship or appearance of such relationship.

(c) Contract Period.

(1) Time limit on use of temporary help service firm. An agency may use a temporary help service firm(s) in a single situation, as defined in §300.503 of the CFR, initially for no more than 120 workdays. Provided the situation continues to exist beyond the initial 120 workdays, the agency may extend its use of temporary help services up to the maximum limit of 240 workdays.

(2) Time limit on use of individual employee of a temporary help service firm.

**37.112-70 - Government Use of Private Sector Temporaries
(Continued)**

- (i) An individual employee of any temporary help firm may work for up to 120 workdays in a 24-month period. The 24-month period begins on the first day of assignment.
- (ii) An agency may make an exception for an individual to work up to a maximum of 240 workdays only when the agency has determined that using the services of the same individual for the same situation will prevent significant delay.

(d) Acceptable Service Provider.

(1) A "Temporary Help Service Provider" is an entity that provides specific services for brief or intermittent periods by its employees. The "provider" shall be the employer legally responsible for recruiting, testing, hiring, training, assigning, paying (including benefits, leave, payroll deductions, taxes), disciplining, providing unemployment insurance, workers' compensation, liability insurance, and bonding.

(2) A "Temporary Help Service Provider" **is not** an individual person.

(e) Administrative clearances required.

* (1) The initial 120 workday contract period shall be in the form of a memorandum from the Chief Executive Officer to the Regional Director for approval. Regional Office requests shall be in the form of a memorandum from the Program Office to the corresponding Assistant Director for approval. Central Office requests shall be in the form of a memorandum from the Program Office to the corresponding Assistant Director for approval. *

(2) Extension periods (not to exceed 120 workdays) shall be submitted in the form of a memorandum from the Chief Executive Officer to the Regional Director for approval. Regional Office requests shall be in the form of a memorandum from the Program Office to the Regional Director for approval. Central Office requests shall be in the form of a memorandum from the Program Office to the corresponding Assistant Director for approval.

* (f) Justification requirements. The CCM shall submit to the Contracting Officer an RP/RCA addressing the following:

**37.112-70 - Government Use of Private Sector Temporaries
(Continued)**

(Documentation required under BPAP Part 37.103-71 is not applicable).

*

- (1) Description of service required;
 - (2) Vacant staff positions;
 - (3) Number of work days required;
 - (4) Number of hours per day, number of days per week;
 - (5) Documentation of Market Research, to include estimated cost per hour/session/day and estimated cost of contract;
 - (6) Reason for position vacancy;
 - (7) Number of days position has been vacant;
 - (8) Circumstances creating the critical need, and that the services cannot be accomplished by current staffing; and
 - (9) Certification that no employer/employee relationship or appearance of such relationship will be created, and that the service will not be supervised by the Government except for technical instructions and security-related matters.
 - (10) The Personnel Officer shall certify the services being acquired are not in lieu of regular recruitment and hiring procedures under Civil Service Laws and regulations, services will not displace a Federal employee, services will not supplement current staffing above authorized position guidelines, and services are not classified as supervisory, managerial, or senior executive service positions.
- (g) Prior to acquisition of temporary private sector services, the Chief Executive Officer and the Regional Director shall approve the action in writing.
- * (h) The CCM shall provide a written evaluation of services provided and performance of the contractor in accordance with BPAP Part 37.102 and the Procurement TRM, Part 37.

*

SUBPART 37.2 - ADVISORY AND ASSISTANCE SERVICES

37.200-70 - Policy

Advisory and Assistance Services (or Consulting Services) shall be acquired in strict accordance with FAR 37.2. Advisory and Assistance Services shall be obtained from organizations and persons outside the Federal Government only when such services and/or special abilities are necessary and are not available from DOJ or other Federal agencies.

37.200-71 - Management Controls

Before processing any contractual action determined by the Contracting Officer to be for Advisory and Assistance or Consulting Services, the Regional Chief, Procurement and Property and the Chief, Procurement and Property Branch, shall be contacted for instructions on how to proceed. Former Government or Bureau employees shall not be given preference in Advisory and Assistance Services arrangements.

The Director shall approve procurement actions for Advisory and Assistance contracts, regardless of value, in advance of issuance of the solicitation. All requests for approval must have the concurrence of the institution Chief Executive Officer, and Regional Director or appropriate Assistant Director.

Within 30 days of completion of the Advisory and Assistance Services contract, the CCM shall provide a written evaluation of the services provided and the performance of the contractor to the Contracting Officer (Attachment, 37-A, of the Procurement TRM or similar form).

37.202 - Bureau Exclusions

The Bureau has administratively determined the following services are not considered Advisory and Assistance Services:

- * (a) Community Corrections and Detention Division Contracts; *
- (b) InterGovernmental and InterAgency Agreements;
- (c) Drug Testing (Inmate and Staff);
- (d) Human Immunodeficiency Virus (HIV) Testing;
- (e) Medical Service Contracts;

37.202 - Bureau Exclusions (Continued)

- (f) Guard Service Contracts (Outside Medical);
- (g) Vending Machine Contracts; and
- (h) Educational and Vocational Services.

37.204-70 - Cost Center Manager Responsibilities

The CCMs having a requirement for Advisory and Assistance Services contracts shall submit the following to the Contracting Officer:

- (a) A statement certifying the requirement is for Advisory and Assistance Services;
- (b) Written justification of need and certification that such services do not unnecessarily duplicate any previously performed work or services. The certification shall be signed by the appropriate Regional Director or Assistant Director;
- (c) Complete SOW and evaluation criteria;
- (d) Justification for Other than Full and Open Competition (if required);
- (e) The name of a contract monitor (COTR) who will ensure the following:
 - (1) Services were utilized as intended;
 - (2) Services met the original objectives;
 - (3) Costs were in accordance with the initial estimates;
 - (4) RP, and funds availability; and
 - (5) Performance Evaluation Report in accordance with BPAP Subpart 37.205; and
- (f) Written approval of the Director.

37.205 - Contracting Officer Responsibilities

It is the Contracting Officer's (or Administrative Contracting Officer's) responsibility to ensure contract monitoring reports are received and reviewed for policy compliance quarterly and with each pay application (or as required by the Contracting Officer).

PART 39

ACQUISITION OF FEDERAL INFORMATION RESOURCES

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PART 39. - ACQUISITION OF INFORMATION TECHNOLOGY RESOURCES

SUBPART 39.0 - ACQUISITION OF INFORMATION TECHNOLOGY (IT) RESOURCES

39.001-70 - Policy

- * When acquiring IT resources (ADP and Telecommunications), equipment and services, the Contracting Officer shall follow all applicable policies and procedures, including, the Federal Acquisition Regulation (FAR), the Clinger-Cohen Act (CCA), previously the Information Technology Management Reform Act (Division E, P.L. 104-106), Department of Justice (DOJ) Order 2830.1D, and the Program Statement on Personal Computers. The Designated Senior Official (DSO) is responsible for issuing IT resource acquisition policies and procedures deemed necessary to supplement the FAR and the implementation of Executive Order 13011: Federal Information Technology.

The Bureau's Deputy Assistant Director for Information Resource Management, Information, Policy and Public Affairs Division (DAD), is responsible for disseminating CCA acquisition policies and procedures published by the DSO. The Contracting Officer shall maintain current CCA policies and procedures. The DSO is responsible for establishing Compatibility-Limited Specifications, deviations to the CCA acquisition policy, solicitation provisions, and contract clauses. Requests for deviations and approvals required by the CCA acquisition policy shall be submitted to the DAD, who shall approve or obtain approval from the DSO as appropriate. *

39.002-70 - Delegations of Procurement Authority

Notwithstanding FAR 1.601, authority to contract for IT resources is vested in the Office of Management and Budget (OMB), unless an exception in 40 U.S.C. § 759(a)(3) applies. The Procurement Authority to the DOJ in accordance with the Clinger-Cohen Act may be further re-delegated to the Bureau. The Assistant Director for Information, Policy, and Public Affairs (IPPA), is the approving official under the DOJ delegation of Procurement Authority.

The Assistant Attorney General for Administration must approve IT resource procurements exceeding the Bureau's Procurement Authority. The DOJ has placed further restrictions on the Procurement Authority in DOJ Order 2830.1D.

39.002-70 - Delegations of Procurement Authority (Continued)

The Office of Information Systems (OIS) is responsible for coordinating the approval of IT resource acquisitions. Questions and correspondence relating to approvals of IT resource acquisitions should be directed to the Administrative Officer, OIS, Central Office.

- * Acquisition Review. All applicable Cost Center Managers or Program Officials shall ensure that approvals and other required documentation are accomplished prior to submission to the Contracting Officer. Requests for Purchases (RPs) for IT resources submitted by institutions and Regional Offices shall be approved by the local Computer Services Manager (CSM) to ensure that requests meet the standards prescribed in the Program Statement on Personal Computers. OIS is available for consultation on computer configurations, local area networks software selections, etc. *

IT RESOURCE ACQUISITION PROCEDURES:

(a) Requirements for a single RP for less than \$25,000 shall be approved locally by the CSM; and

- * (b) Acquisitions of \$25,000 or more per RP require approval at a higher level than the local CSM. Additional documentation which includes a Requirements Analysis, regardless of individual item costs, must accompany the RP in accordance with FAR Subpart 7.105. Once the CSM approves the RP, a transmittal memorandum addressed to the Assistant Director, IPPA, shall be prepared for the Chief Executive Officer's signature. Forward the transmittal, along with the documentation described above, to the Regional Director. The Regional Director or designee shall approve the requests for further action, or return them to the referring CEO with comments. The Regional Computer Services Administrator shall review and forward the approved requests to OIS, Central Office. Facsimile transmission may be used to facilitate the approval process. *

An IT resource requirement listed in (b) above shall not be split between multiple RPs to avoid required approval and competition requirements. Acquisition requests must be submitted as early as possible to avoid delays, and shall be in accordance with BPAP Subpart 7.102-70.

39.003-70 - Competition Requirements

- * IT acquisitions not exceeding the Simplified Acquisition Threshold, and using open market procedures shall use FAR Part 13. IT acquisitions using the GSA non-mandatory supply schedule contracts shall use FAR Subpart 8.4. All IT acquisitions exceeding the micro-purchase threshold must be competed, both open market and non-mandatory schedule items, or appropriate documentation must be provided to support the best value acquisition. *

PART 42

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*

PART 42. - CONTRACT ADMINISTRATION

**SUBPART 42.13 - Suspension of Work, Stop-Work Orders, and
Government Delay of Work**

42.1303 - Stop-Work Orders

(a) Decisions to issue a stop-work order must be approved according to the following:

<u>Contracting Office</u>	<u>Level of Approval</u>
Institutions	Regional Chief, Procurement and Property
Regional and Central Offices	Chief, Procurement and Property Branch

(b) Requests for approval shall be **in writing, in advance**, and shall fully document the circumstances that warrant issuing a stop-work order.

(c) Cancellations of stop-work orders require approval according to paragraph (a) above.

*** SUBPART 42.15 - CONTRACTOR PERFORMANCE INFORMATION**

It is Bureau policy to issue performance reports on all contracts. These reports are to be maintained in the contract file for reference by the BOP Contracting Officers and Contracting Officers from other federal agencies.

Except as provided in Subpart 36.201-70, Construction, and the Community Corrections Manual for the Community Corrections and Detention Division, each Cost Center Manager (CCM) or Contracting Officer's Technical Representative (COTR) shall provide a written evaluation of the performance of contractors to the Contracting Officer (Attachment 37-A of the Procurement TRM, or similar form), at the following intervals:

Interim Performance Reports: Not less than annually (e.g., within 30 days of the completion of each base and option year of a contract), or within 30 days of 50% completion of a contract (or when option years are not applicable).

Final Performance Reports: Within 30 days of completion of a contract.

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PART 43

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PART 43. - CONTRACT MODIFICATIONS

SUBPART 43.2 - CHANGE ORDERS

43.204-70 - Administration

The following procedures shall be followed when documenting Change Orders/Supplemental Agreement modifications to contracts:

(a) Change Orders, Supplemental Agreements and Modifications shall be issued utilizing an SF-30 (Amendment of Solicitation/Modification of Contract). The SF-30 is the only authorized form available for issuing a modification to a contract.

Note: Orders less than the Simplified Acquisition Procedures (SAP) threshold may be modified by using an Order form (SF-1449) in lieu of an SF-30.

(b) If the Contracting Officer determines it is necessary to issue a Change Order and the final price of the work cannot be determined, the Contracting Officer shall incorporate into the Change Order a "Not to Exceed Price" and Definitization Schedule. The modification must either be definitized within the time limits or documented as to why the schedule was not met. In addition, if the schedule was not met the Contracting Officer should receive documentation from the parties responsible to support the Contracting Officer's statement. This type of contract modification is to be used only if agreement cannot be reached at the time of the execution of the modification. Availability of funds for the "Not to Exceed Price" must be certified for the modification.

(c) After issuing a Change Order, as described in (b) above, the Contracting Officer shall attempt to negotiate a fixed price as soon as possible to determine the costs involved. Upon conclusion of successful negotiations, the Contracting Officer shall issue a Bilateral Modification to definitize the agreement.

* (d) Should the Contracting Officer be unable to negotiate an equitable adjustment to define a Change Order, the Contracting Officer may issue a Unilateral Modification to the contract to add or deduct cost and/or time to the contract. The Contracting Officer must determine the compensation to be fair and reasonable for the supplies received or services performed. Payments under such modifications exceeding 80% of the Unilateral Contract Modification without a proper "Contractor's Statement of Release" must be approved by the Chief, Procurement and Property Branch.

43.204-70 - Administration (Continued)

All Regional and institution Unilateral Contract Modifications of this type must be approved at the next higher organization level. *

(e) All contract modifications shall be numbered consecutively without regard to whether the modification is unilateral or bilateral.

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Part 48

VALUE ENGINEERING

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* **Part 48. - VALUE ENGINEERING**

SUBPART 48.1 - Policies and Procedures

48.103 - Processing Value Engineering Change Proposals

If a value engineering clause has been included in a contract, the Government may realize cost savings or improved performance, upon receipt and acceptance of a Value Engineering Change Proposal (VECP). A VECP is a proposal that requires a change to the contract and results in reducing the contract price, without impairing essential functions or characteristics of the contract.

The Cost Center Manager (CCM) will review all VECPs and recommend to the Contracting Officer whether to accept or reject the VECP. The CCM will provide documentation to support the recommendation.

The Contracting Officer shall notify the Contractor of the status of the VECP, within 15 calendar days of receipt.

(a) Acceptance of a VECP. If the VECP and the CCM's recommendation is acceptable to the Contracting Officer, a modification will be completed to accomplish the following:

(1) Accept the VECP;

(2) Reduce the Contract price by the amount of the "instant contract savings;" and,

(3) Provide the contractor a share of the savings, in accordance with the method prescribed in FAR 48.104-1.

(b) Rejection of a VECP. The Contractor will be notified within 30 days if the VECP is rejected by the CCM and the Contracting Officer.

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PART 49

TERMINATION OF CONTRACTS

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PART 49. - TERMINATION OF CONTRACTS

SUBPART 49.1- GENERAL PRINCIPLES

49.101-70 - Authorities and Responsibilities

(a) Authority to Terminate. Only the Contracting Officer may terminate a Bureau contract. Ordinarily, termination of a contract will be made as a last resort. The Contracting Officer shall attempt to effectuate a no-cost settlement if circumstances are appropriate.

(b) Written Concurrence Required. All contract terminations, whether for default or convenience, and all contract settlement agreements must receive prior written concurrence as follows:

(1) The Regional Chief may approve "No-Cost Terminations for Convenience" effected by a bilateral modification for an acquisition not exceeding the SAT.

* (2) Institution and Regional Contracts. The Contracting Officer must document fully all other requests to terminate or settle an institution or Regional contract. The request shall be submitted with the Regional Chief's concurrence to the Chief, Procurement and Property Branch, or his or her designee, who may seek Office of General Counsel approval (when appropriate). *

* (3) Central Office Contracts. The termination or settlement of a Central Office contract not meeting the criteria in paragraph (1), may only be made with the concurrence of the Chief, Procurement and Property Branch or his or her designee and the Office of General Counsel, when appropriate. *

49.106-70 - Fraud or Other Criminal Conduct

Suspected fraud or other criminal conduct related to the settlement of a terminated contract will be reported through the Regional Chief, Procurement and Property to the Chief, Procurement and Property Branch.